Page 116 WATERHOUSE - 10-19-21 1 2. Α. -- Highland's responsibility. Highland's responsibility. 3 Who, at Highland, was responsible 4 for drafting this section of the audit report? 5 6 Α. I -- I don't know the answer to 7 Again, there was a team who worked on And I don't know, you know, whether it 8 was the staff or the manager. 9 10 Again, this is where I let the teams manage. And, you know, there may be a 11 corporate accountant who worked on this. 12 Τ just -- you know, I wasn't part of that process 13 to give that person experience. I don't know. 14 15 Do you recall having any Ο. communications with anybody at any time 16 concerning this section of the report? 17 Yeah, I don't recall. 18 Α. 19 Do you recall whether you ever told Ο. 20 anybody at any time that any aspect of this section of the report was inaccurate or 21 22 incomplete? I don't recall. 23 Α. As you sit here today, do you have 24 Ο.

any reason to believe that this section of the

Page 117 WATERHOUSE - 10-19-21 1 audit report is incomplete or inaccurate in any way? 3 And I'm happy to give you a moment 4 to -- to look at it, if you would like. 5 MS. DANDENEAU: Objection to form. 6 7 MS. DEITSCH-PEREZ: Same. I mean, I would have to look at -- I 8 Α. would have to look at the bill to the note 9 schedule to make sure I know you presented me 10 with materiality, but again, there might be a 11 note as of 12/31/18 that somehow was -- was 12 13 under materiality not disclosed. I don't -- I 14 don't know. I would need more information. 15 Okay. But without more information, Ο. 16 you have no reason to believe anything this section is inaccurate; correct? 17 MS. DANDENEAU: Objection to form. 18 19 Α. I don't. I mean, you know, this was 20 part of the audit. Thank you. Now, you will see if we 21 Ο. could scroll just a little bit more that each 22 of the first five paragraphs concerns 23 24 specifically the four affiliates that we've been discussing and Mr. Dondero. 25

Page 118 WATERHOUSE - 10-19-21 1 MR. MORRIS: If we could go the other way, La Asia. We don't need Okada. 3 We're going to have to thread the needle. 4 Okay. Good, perfect. 5 6 Ο. Do you see those five paragraphs 7 certain the four affiliates and Mr. Dondero as we've been referring to today? 8 Α. Yes. 9 Okay. And do you see at the end of 10 every paragraph it states, quote: A fair value 11 of a partnership's outstanding notes receivable 12 approximates the carrying value of the notes 13 14 receivable? 15 Α. Yes, I see that. Do you have an understanding of what 16 Ο. that means? 17 18 Α. Yes. 19 What is your understanding of that Ο. 20 sentence? It is the -- again, the -- the fair 21 Α. value, right, which is -- which is what the --22 what Highland could sell that asset for. 23 24 statement is comparing the fair value of the notes to the carrying value, so the carrying 25

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- value is the line item that you showed me
- 3 earlier that is in Notes and Other Amounts Due
- 4 from Affiliates.

- 5 Q. Okay. Is another way to say this is
- 6 that the fair market value of the notes equals
- 7 the principal amount and -- withdrawn.
- 8 Is the fair way to interpret this
- 9 that the fair market value of the notes equals
- 10 all remaining unpaid principal and interest due
- 11 under the notes?
- MS. DANDENEAU: Object to the form.
- MS. DEITSCH-PEREZ: Objection, form.
- 14 A. I don't know the answer to that,
- 15 because I don't recall where -- where any --
- 16 where -- in what line item was the interest
- 17 component reported.
- 18 Q. All right. Well, if we look in this
- 19 audit report, you will see in the middle of the
- 20 first paragraph, for example, it states that as
- of December 31st, 2018, total interest and
- 22 principal due on outstanding promissory notes
- 23 was approximately \$5.3 million.
- Do you see that?
- 25 A. I do.

Page 120 WATERHOUSE - 10-19-21 1 2. Q. Is that the carrying value or the fair value? 3 That would be the carrying value --4 Α. And is the last --5 Ο. 6 Α. -- in my opinion. 7 Okay. And it is in your opinion as Ο. the chief financial officer of Highland during 8 the period of time that you described; right? 9 It is an educated opinion? 10 I'm reading this at face value. 11 taking that as that is carrying value. 12 13 0. Okay. And does the last sentence 14 say that the carrying value is roughly 15 approximate to the fair market value? 16 Objection to form. MS. DANDENEAU: MS. DEITSCH-PEREZ: Objection, form. 17 Again, this note to the financial 18 Α. statement is specific to notes and other 19 amounts due from affiliates. 20 21 Ο. Correct. 22 If the interest component is Α. reported elsewhere on the balance sheet, you 23 24 know, it -- it -- it could be off. Again, I don't have the detail. I don't know, but yes, 25

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- 2 look, I mean, if you -- I mean, if you are
- 3 saying the 5.3 million is in the notes and
- 4 other amounts due from affiliates, then the
- 5 last statement is saying the fair value
- 6 approximates 5.3 million. That is what that
- 7 last sentence is saying.
- 8 Q. Do you see in the middle of the
- 9 first paragraph -- not in the middle, the next
- 10 to last sentence there is a statement that the
- 11 partnership will not demand payment on amounts
- that exceed HCMFA's excess cash availability
- 13 prior to May 31st, 2021.
- 14 Do you see that?
- 15 A. I do.
- 16 Q. Do you know when Highland agreed not
- 17 to demand payment as described in that
- 18 sentence?
- 19 A. I don't know specifically.
- 20 Q. Do you know why Highland agreed not
- 21 to demand payment on HCMFA's notes until May
- 22 2021?
- 23 A. Yes.
- Q. Why was that decision made?
- 25 A. You know, well, it -- it -- that

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- 2 decision was made as to not put HCMFA into a
- 3 position where it didn't have sufficient assets
- 4 to pay for the demand note.
- 5 Q. And at the time the agreement was
- 6 entered into, pursuant to which the partnership
- 7 wouldn't demand payment, did HCMFA have
- 8 insufficient assets to satisfy the notes if a
- 9 demand had been made?
- 10 MS. DANDENEAU: Objection to form.
- 11 A. I don't have HCMFA's financial
- 12 statements in front of me as of 12/31/18.
- Q. Was there a concern that HCMFA would
- 14 be unable to satisfy its demands under the
- 15 notes if demand was made?
- MS. DANDENEAU: Objection to form.
- 17 A. Well, there is -- I don't recall --
- 18 I mean, there is something, right, in place to
- 19 basically not demand payment until May 31, 2021
- 20 as detailed here.
- 21 Q. And who made the decision to enter
- 22 into -- who made the decision on behalf of
- 23 Highland not to demand payment until May 31st,
- 24 2021?
- 25 A. I'm trying to remember. I don't

Page 123 WATERHOUSE - 10-19-21 1 remember exactly -- I don't remember if it was 2. myself or -- or Jim Dondero who -- who -- there 3 was -- there was something signed, from what I 4 5 recall, that -- that -- that backed up this 6 line item in the -- in the notes I'm -- look, 7 I'm, I'm --We will get to that. 8 Ο. 9 Α. You --10 I'm just --Q. You have -- I mean --11 Α. We're going to give that to you. 12 Ο. I'm going to give that to you. 13 You -- you -- you have all the 14 Α. 15 documents. I don't have the documents, and that is what makes it so hard. I don't have 16 any documents to prepare for this deposition; 17 right? You have all -- I don't -- I don't -- I 18 don't remember, but, you know, again, it would 19 20 probably be myself or Jim. Do you know if Highland received 21 Ο. anything in return for its agreement not to 22 make a demand for two years? 23 24 Α. I don't -- I don't think it referred 25 anything.

Page 124 WATERHOUSE - 10-19-21 1 And did you and Mr. Dondero discuss 2. Q. HCMFA's ability to satisfy the notes if a 3 demand was made at the time this agreement was 4 5 entered into? MS. DANDENEAU: Objection to form. 6 7 Α. I don't -- I don't -- I don't recall having a specific conversation, if I did, or --8 or David Klos. 9 Okay. I'm just asking if you recall 10 Ο. any conversations that you had. 11 I don't recall. 12 Α. 13 Ο. Okay. Do you know why Highland 14 loaned the money to HCMFA that is the subject 15 of the notes described in this paragraph? I don't remember specifically why 16 Α. 5.3 million was loaned. I mean, I -- it would 17 have to be put in the context. 18 19 Do you have any recollection at all Ο. as to why Highland ever loaned any money to 20 21 HCMFA? 22 Α. Yes. 23 MS. DANDENEAU: Objection to form. 24 Q. What do you remember about that? There was a Highland Global 25 Α.

2 Allocation Fund, which was a -- a fund managed

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- 3 by Highland Capital Management Fund Advisors.
- 4 There was a -- we -- I'm just telling you,
- 5 there was -- there was -- there was a -- a
- 6 ultimately a NAV error found in this fund while
- 7 it was an open-ended fund and, you know, there
- 8 were amounts owed by the advisor in -- in
- 9 relation to that NAV error.
- There were also, for the same fund,
- 11 that same fund was ongoing an
- 12 open-end-to-close-end conversion, and as part
- of that proposal, shareholders who voted for
- 14 the conversion received compensation from the
- 15 advisor.

- 16 Q. All right. Now, the events that
- 17 you're describing occurred in the spring of
- 18 2019; right?
- 19 A. These started back -- I think, I
- 20 mean --
- Q. I apologize.
- 22 A. -- that -- I mean, the answer to
- 23 that is no.
- Q. I apologize, the loans that were
- 25 made in connection with the events that you're

Page 126 WATERHOUSE - 10-19-21 1 describing occurred in May 2019; right? 2. MR. RUKAVINA: Objection to the 3 extent that calls for a legal conclusion. 4 I don't recall specifically what 5 Α. 6 amounts of money were moved when, for what 7 purpose. Okay. Fair enough. Going to the 8 Ο. next paragraph, do you recall that NexPoint 9 Advisors had obtained a number of loans from 10 Highland, and they rolled up those loans into 11 one note in approximately 2017? 12 13 Α. This is for NexPoint Advisors? 14 Q. Yes. 15 Α. I -- I mean, I don't -- I don't recall the NexPoint Advisors loan being a 16 roll-up loan, but --17 18 Ο. Do you know why? But, look, if you have documents 19 Α. 20 that show -- I mean, look, I just don't recall. Okay. That is fair. Do you know 21 Ο. why -- do you have any recollection as to why 22 Highland loaned money to NexPoint? 23 24 Α. Yes. 25 Why did High -- why do you recall --Q.

Page 127 WATERHOUSE - 10-19-21 1 what is the reason you recall Highland lending money to NexPoint? 3 I mean, I was just -- I just -- I 4 just recall. I mean, I just -- I don't 5 6 remember why. 7 I understand. And I'm asking you if vou recall --8 9 Oh, why -- I thought you say --Α. NexPoint Advisors was launching a fund which 10 is -- I believe that the legal name is NexPoint 11 Capital, Inc. And it -- it provided a 12 13 co-invest into that fund. 14 And, from what I remember, the --15 the -- that NexPoint borrowed money from Highland at the time to make that co-invest. 16 So this was an investment that 17 NexPoint was required to make; is that right? 18 19 MS. DANDENEAU: Objection to form. 20 Α. I don't know if it was required to make, I don't recall that, or if it just made 21 22 it. Okay. But your recollection is that 23 Ο. 24 NexPoint made an investment and they borrowed

money from Highland to finance the investment.

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Page 128
                   WATERHOUSE - 10-19-21
 1
                 Do I have that right?
          Α.
                Yes.
 3
                How about HCRE? Do you know why
 4
          Ο.
 5
     HCRE borrowed money from Highland?
 6
          Α.
                 I don't remember specifically.
 7
          Q.
                 Do you remember generally?
                 Generally, yeah -- I mean, yes.
 8
          Α.
 9
                 Can you tell me your general
          Q.
     recollection as to why Highland loaned money to
10
11
     HCRE?
                For -- for -- for investment
12
          Α.
13
     purposes.
14
          Q.
                 So HCRE made the investment and it
15
     obtained a loan, or loans, from Highland in
     order to finance that investment or those
16
     investments.
17
                Do I have that right?
18
                 I mean, I -- you know, generally.
19
          Α.
20
                Okay. How about Highland Management
          Q.
     Services, Inc.?
21
22
                Do you have any recollection as to
     why HCMS borrowed money from Highland?
23
24
          Α.
                Generally.
                 What is your general recollection as
25
          Q.
```

Page 129 WATERHOUSE - 10-19-21 1 to why HCMS borrowed money from Highland? Α. For -- for investment purposes. 3 So it is the same thing, HCMS wanted 4 0. 5 to make investments and it borrowed money from 6 Highland in order to finance those investments; 7 is that right? 8 Α. I mean, yes, generally. I mean, I can't -- I don't -- on the services, there --9 there are several loans in these schedules. 10 You know, I can't remember why every single one 11 of these were made, but I would say, yeah, I 12 13 mean, generally. 14 Q. Okay. I appreciate that. 15 MR. MORRIS: Let's go to the page with Bates No. 251. La Asia, are you 16 there? 17 18 MS. CANTY: Sorry, John. It went 19 out for a minute. Can you say that again. 20 I don't know what is going on. MR. MORRIS: The page with Bates 21 22 No. 251, can we go to that. 23 MS. CANTY: Yes, sorry. 24 MR. MORRIS: Keep going to the 25 bottom. Yeah, there you go.

Page 130 WATERHOUSE - 10-19-21 1 Ο. Do you see, Mr. Waterhouse, that there is a section there called Subsequent 3 4 Events? I do. 5 Α. And does this relate to the last 6 Ο. 7 sentence above the signature line on the management representation letter that we talked 8 about earlier where you made the representation 9 that you disclosed subsequent events? 10 I mean, it relates to it, but not in 11 12 its entirety. 13 Q. Okay. 14 MR. MORRIS: If we can scroll up to 15 capture the entirety of this section right 16 here. And what do you mean by that, sir? 17 Ο. MR. MORRIS: Yeah, right there. 18 Perfect. 19 There are -- there are different 20 Α. subsequent events in -- under GAAP. So there 21 22 are -- and -- and -- so what we see in the 23 notes to the financial statements are one type 24 of subevent.

Okay. And -- and would the type of

25

Q.

2 subsequent event relating to affiliate loans be

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- 3 captured in this section if they were -- if
- 4 they were made after the end of the fiscal year
- 5 and prior to the issuance of the audit report?
- A. Yes, if they were deemed material or
- 7 disclosable.

- 8 Q. Okay. I appreciate that.
- 9 Do you see the next to the last
- 10 entry there? It says, Over the course of 2019
- 11 through the report date, HCMFA issued
- 12 promissory notes to the partnership in the
- aggregate amount of \$7.4 million?
- 14 A. Yes.
- 15 Q. And does that refresh your
- 16 recollection that those are the notes that
- 17 related to the NAV error that you mentioned
- 18 earlier?
- 19 A. I don't -- I don't remember the
- 20 exact. Again, there are -- I mentioned two
- 21 line items; right?
- 22 Q. Yes.
- 23 A. I mean, it was the GAAP conversion
- 24 process plus the -- the NAV error. I don't
- 25 have the details. I don't recall specifically

- 1 WATERHOUSE 10-19-21
- 2 if -- you know, what -- if that 7.4 million was
- 3 solely attributable to the NAV error.
- 4 Q. Okay. But there is no question that
- 5 Highland told PricewaterhouseCoopers that over
- 6 the course of 2019 HCMFA issued promissory
- 7 notes to the partnership in the aggregate
- 8 amount of \$7.4 million; correct?
- 9 A. In the course of the audit, we would
- 10 have produced all promissory notes in our
- 11 possession, including the ones that are
- 12 detailed here.
- 13 Q. Do you recall that you signed the
- 14 two promissory notes that are referenced in
- 15 that provision?
- MS. DANDENEAU: Objection to form.
- 17 A. I didn't recall initially but I've
- 18 been reminded.
- 19 Q. Okay. And -- and do you recall that
- 20 those notes are dated May 2nd and May 3rd,
- 21 2019?
- 22 A. Yes.
- 23 Q. So that was just a month before the
- 24 audit was completed; correct?
- 25 A. Yes. I think we had a June 3rd

Case 3:21-cv-00881-X Docume Dxhiba-A0 Palgel 0820912446 Page 18 of 282 PageID 46941 Page 133 WATERHOUSE - 10-19-21 1 date, right, if -- if my memory serves me right. 3 Yes, I will represent to you that 4 Ο. 5 your memory is accurate in that regard. 6 Did anybody ever instruct you as the 7 CFO to correct this statement that we're looking at in subsequent events? 8 Α. So let me understand. You're saying 9 when I was CFO at Highland Capital did anyone 10 ever ask me to correct the -- over the course 11 of 2019 through the report date HCMFA issued 12 13 promissory notes, this statement? 14 Q. Right. 15 Α. Not that I'm aware. 16 Ο. While you were the CFO of Highland, did anybody ever tell you that that sentence 17 18 was wrong? 19 Not that I'm aware. Α. 20 Q. Highland -- withdrawn. HCMFA disclosed these notes in its 21 22 own audited financial statements; right? 23 MR. RUKAVINA: Objection, form.

I assume that these would be

material -- if these are material financial

24

25

Α.

statements, yes, they -- they -- they should be

WATERHOUSE - 10-19-21

- 3 and they were likely disclosed.
- 4 Q. Now, there is no statement
- 5 concerning the 2019 notes about the forbearance
- 6 that we looked at in the affiliated note
- 7 section of the report; right?
- 8 MS. DANDENEAU: Objection to form.
- 9 Q. I'll withdraw. That was bad.
- 10 Do you recall when we were looking
- 11 at the paragraph concerning HCMFA earlier it
- 12 had that disclosure about the agreement whereby
- 13 Highland wouldn't ask for demand on the -- on
- 14 the HCMFA notes?
- 15 A. Yes.
- 16 O. That forbearance disclosure is not
- 17 made with respect to the 2019 notes; right?
- 18 A. Not -- look, not that I can recall,
- 19 unless -- unless it was done at a subsequent
- 20 day.

- 21 Q. Right. And it is not in the
- 22 subsequent event section that we're looking at
- 23 right now where the 2019 notes are described;
- 24 right?
- 25 A. Right. But this is through

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 1
                It could have been done on June 4th.
     June 3rd.
     I don't -- I don't -- I don't recall.
 3
 4
          Ο.
                Okay.
 5
                MR. MORRIS: Can we put up on the
 6
          screen the HCMFA audit report. And while
 7
          we're --
                MS. DANDENEAU: What exhibit is
 8
          this?
 9
10
                MR. MORRIS: La Asia, what number is
          that?
11
                MS. CANTY:
                             45.
12
13
                MR. MORRIS: So this will be marked
14
          as Exhibit 45.
15
                 (Exhibit 45 marked.)
                MS. CANTY: Yeah, and I will put it
16
17
          in the chat.
18
                MS. DANDENEAU: Thank you.
19
                Okay. All right. Do you see that
          Ο.
20
     this is the consolidated financial statements
     for HCMFA for the period ending 12/31/18?
21
22
          Α.
                Yes.
                As the treasurer of HCMFA at the
23
          Ο.
24
     time, did you have to sign a management
     representation letter similar to the one that
25
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Case 3:21-cv-00881-X Docume Dxhiba-A0 Palgel 0850912446 Page 21 of 282 PageID 46944 Page 136 WATERHOUSE - 10-19-21 1 we looked at earlier for Highland? I would imagine I would have been 3 Α. asked to. I don't recall if I did. 4 5 Do you recall ever being asked by an Ο. 6 auditor to sign a management representation 7 letter and then not doing it? 8 Α. No. MR. MORRIS: Can we just scroll down 9 again. I just want to see the date of the 10 document. 11 I mean, let me -- you know, there 12 Α. 13 are different versions to management 14 representation letters I will qualify. 15 Yes, there are certain -- from time 16 to time auditors can make representations 17 that -- in the rep letter that is being 18 proposed that are inaccurate or out of scope or 19 things like that and they've asked for 20 signature. In that context, yes. I mean, you 21 22 know -- I mean, if I have been asked to sign and make those representations and those 23

24

representations are invalid, yes, I would not,

Case 3:21-cv-00881-X Docume Dxhiba-A0 Palgel D860912446 Page 22 of 282 PageID 46945 Page 137 WATERHOUSE - 10-19-21 1 Ο. Okay. PricewaterhouseCoopers served as HCMFA's outside auditors as well; correct? 3 4 Α. Yes. 5 Do you see that this audit report is Ο. signed on June 3rd, 2019, just like the 6 7 Highland audit report? Α. That is correct. 8 And did the process of -- of 9 Q. preparing HCMFA's audit report, was that the 10 same process that Highland followed when it did 11 its audit report at this time? 12 I mean, it is a different entity. 13 Α. There are different assets. You know, it --14 15 it -- it is -- as you saw, Highland's financials are on a consolidated basis. 16 This is different, so it is under the same control 17 environment and team. 18 19 Okay. I appreciate that. So the Ο. 20 same control environment and team participated in the preparation of the audit for Highland 21 22 and for HCMFA at around the same time; correct? 23 Α. Yes.

24

25

the report. I don't have the Bates number.

MR. MORRIS: Can we go to page 17 of

Case 3:21-cv-00881-X Docume Dxhiba-A0 Palgel 0870912446 Page 23 of 282 PageID 46946 Page 138 WATERHOUSE - 10-19-21 1 2. Q. Okav. Do you see that just like Highland's audited financial report, HCMFA's 3 audited financial report also has a section 4 related to subsequent events? 5 6 Α. Yes. 7 And am I reading this correctly that Q. just as Highland had done, HCMFA disclosed in 8 its audited financial report a subsequent event 9 that related to the issuance of promissory 10 notes to Highland in the aggregate amount of 11 \$7.4 million in 2019? 12 13 Α. That is what I see in the report. 14 Q. And you were the treasurer of HCMFA 15 at the time; right? Yes, to the best of my knowledge. 16 Α. And did anybody ever tell you prior 17 Ο. to the time of the issuance of this audit 18 19 report that that sentence relating to HCMFA's

- 20 2019 notes was inaccurate or wrong in any way?
- 21 A. Not that I recall.
- Q. As you sit here right now, has
- 23 anybody ever told you that that sentence is
- inaccurate or wrong in any way?
- 25 A. Not that I recall.

Case 3:21-cv-00881-X Docume Dxhiba-A0 Paled 0880912446 Page 24 of 282 PageID 46947 Page 139 WATERHOUSE - 10-19-21 1 I apologize if I asked you this Q. already, but has anybody ever told you at any 3 time that you are not authorized to sign the 4 5 promissory notes that are the subject of the 6 sentence we're looking at? 7 Not that I recall. Α. Did anybody ever tell you at any 8 Ο. time that you had made a mistake when you 9 signed the promissory notes that are the 10 subject of this sentence? 11 12 Α. Say that again. Did anyone ever say 13 that I made a mistake? 14 Q. Let me ask the question again. Did anybody ever tell you at any 15 16 time that you made a mistake when you signed the two promissory notes in Highland's favor on 17 behalf of HCMFA in 2019? 18 Not that I recall. 19 Α. 20 MR. MORRIS: Let's just look at the promissory notes quickly. Can we please 21 22 put up Document Number 1, and so this is in the pile that y'all have. We'll just go 23

for a few more minutes and we can take our

24

25

lunch break.

Page 140 WATERHOUSE - 10-19-21 1 All right. So I don't know if you Ο. have seen this before, sir. Do you see that 3 this is a complaint against HCMFA? 4 Yes, I am looking at it on the 5 6 screen. 7 And have you ever seen this Ο. Okay. document before? 8 9 I went through some of these Α. documents with my counsel here yesterday. 10 MR. MORRIS: All right. Can we go 11 to Exhibit 1 of this document. 12 13 Ο. Do you see Exhibit 1 is a 14 \$2.4 million promissory note back in 2019? 15 Α. Yeah, I found it in the book. Yes, I have it here in front of me. 16 And this is a demand note, right, if 17 Ο. you look at Paragraph 2? 18 19 Α. Yes. 20 And this is a note where the maker Q. is HCMFA, and Highland is the payee; right? 21 22 Α. Yes. 23 MR. MORRIS: And if we can scroll 24 down, can we just see Mr. Waterhouse's 25 signature.

Page 141 WATERHOUSE - 10-19-21 1 Q. Is that your signature, sir? Α. Yes, it is. 3 And did you sign this document on or 4 Ο. 5 around May 2nd, 2019? I don't recall specifically signing 6 Α. 7 this, but this is my signature. And do you recall that 8 Ο. Okav. Highland transferred \$2.4 million to HCMFA at 9 or around the time you signed this document? 10 I don't recall specifically. 11 would want to, as I sit here today, go back and 12 13 confirm that, but again, presumably that -that -- that did happen. 14 15 You wouldn't have signed this Ο. document if you didn't believe that HCMFA 16 either received or was going to receive 17 \$2.4 million from Highland; is that fair? 18 I mean, it -- if -- if there 19 Α. 20 wasn't a transfer of value, yeah, I mean, you 21 know, I would have no reason to -- to sign a 22 note. And -- and Highland wouldn't have 23 Ο. 24 given this note to PricewaterhouseCoopers if --25 withdrawn.

Page 142 WATERHOUSE - 10-19-21 1 HCMFA wouldn't have given this note to PricewaterhouseCoopers if it hadn't received 3 the principal value of -- of the note in the 4 form of a loan; correct? 5 6 MR. RUKAVINA: Objection, legal 7 conclusion, speculation and form. Again, we -- what we provided to PwC 8 Α. were, as part of the audit, any promissory 9 notes executed and outstanding. You know, as a 10 part of the audit, they, you know, they -- they 11 have copies of all the bank statements, 12 13 things -- things of that sort. 14 MR. MORRIS: Okay. Can we go to 15 Exhibit 2. (Exhibit 2 marked.) 16 17 Ο. Do you see that this is a promissory note dated May 3rd, 2019 in the amount of 18 \$5 million? 19 20 Α. Yes. Do you believe this is also a demand 21 Q. note if you look at Paragraph 2? 22 23 Α. Yes. 24 And do you see that HCMFA is the Ο. 25 maker, and Highland is the payee?

Page 143 WATERHOUSE - 10-19-21 1 Α. Yes. And if we go to the bottom, can we 3 Ο. just confirm that that is your signature? 4 5 Α. Yes. 6 Ο. And together these notes are the 7 notes that are referred to both in Highland and HCMFA's audited financial reports in the 8 subsequent event sections; correct? 9 10 MS. DANDENEAU: Objection to form. Α. They -- they -- they totaled 11 \$7.4 million, so presumably, yes. 12 13 0. Okay. And you were authorized to sign these two notes; correct? 14 15 MR. RUKAVINA: Objection, legal conclusion. 16 Yeah. I mean, I'm -- I was the 17 Α. officer of -- of HCMFA. You know, I -- I'm not 18 19 the legal expert on -- on what that -- what 20 that confers to me or what it doesn't. I mean, that is my signature on the notes. 21 22 And you believed you were authorized Ο. to sign the notes; is that fair? 23 I signed a lot of documents in my 24 Α. 25 capacity, just because it is operational in

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1 WATERHOUSE - 10-19-21
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- 2 nature. So, you know, to me this was just
- another document, to be perfectly honest.
- 4 Q. Sir, would you have signed
- 5 promissory notes with the principal amount of
- 6 \$7.4 million if you didn't believe you were
- 7 authorized to do so?
- 8 MS. DANDENEAU: Objection to form.
- 9 Q. Are you frozen?
- 10 A. No. I'm just -- you know, it is --
- 11 you know, again, I typically don't sign
- 12 promissory notes, and I don't recall why I
- 13 signed these, but -- you know, but I did.
- 14 Q. All right. So listen carefully to
- 15 my question. Would you have ever signed
- 16 promissory notes with a face amount of
- 17 \$7.4 million without believing that you were
- 18 authorized to do so?
- 19 A. No. I mean, I'm -- I'm putting my
- 20 signature on there, so no.
- Q. Okay. And would you have signed two
- 22 promissory notes obligating HCMFA to pay
- 23 Highland \$7.4 million without Mr. Dondero's
- 24 prior knowledge and approval?
- MS. DEITSCH-PEREZ: Object to the

Page 145 WATERHOUSE - 10-19-21 1 form. You know, from -- from what I recall 3 Α. around these notes, you know, I don't recall 4 specifically Mr. -- Mr. Dondero saying to -- to 5 6 make this a loan. 7 So my conversation with Mr. Dondero around the culmination of the NAV error as 8 related to TerreStar which was a -- a -- I 9 think it was a year and a half process. 10 don't know, it was a multi-month process, very 11 laborious, very difficult. 12 13 When we got to the end, I had a 14 conversation with Mr. Dondero on where to, you 15 know, basically get the funds to reimburse the fund, and I recall him saying, get the money 16 from Highland. 17 And so he told you to get the money 18 Ο. 19 from Highland; is that right? That is what I recall -- in my 20 Α. conversation with him, that is -- that is what 21 I can recall. 22 Do you know who drafted these notes? 23 Ο. 24 Α. I don't. 25 Did you ask somebody to draft the Q.

Page 146 WATERHOUSE - 10-19-21 1 2. notes? I didn't ask -- I don't specifically 3 Α. ask people to draft notes really. I mean, 4 5 again, you know, the legal group at Highland is 6 responsible and has always been responsible for drafting promissory notes. 7 So based on your -- based on the 8 Ο. practice, you believe that somebody from the 9 Highland's legal department would have drafted 10 these notes. Do I have that right? 11 MS. DEITSCH-PEREZ: Object to the 12 13 John, I also asked you for the Word 14 versions of these notes so we could look at the properties, and you have not provided 15 them. Are you intending to? 16 17 MR. MORRIS: No. 18 Q. Can you answer my question, sir? 19 Α. Again, I --20 MS. DANDENEAU: Do you want him to 21 repeat it? 22 Yeah, why don't you repeat it? Α. Sure. Mr. Waterhouse, based on the 23 Q. 24 practice that you have described in your understanding, do you believe that these notes 25

Page 147 WATERHOUSE - 10-19-21 1 would have been drafted by somebody in the legal department? 3 MS. DEITSCH-PEREZ: Object to the 4 5 form. 6 Α. Yes. 7 Okay. And do you know who would have instructed -- do you have any knowledge as 8 to who would have instructed the legal 9 department to draft these notes? 10 MS. DEITSCH-PEREZ: Object to the 11 form. 12 13 Α. It was whoever was working -- I 14 mean, it was likely someone on the team. I 15 mean, I don't remember exactly on every note or every document, but, again, a lot of these 16 things of this nature -- they're operational in 17 18 nature -- were handled by the team. The team knows to -- I mean, we 19 20 don't draft documents. We're not lawyers. 21 We're not attorneys. It is not what I do or 22 accountants do. 23 So they are always instructed to go 24 and -- and go to the legal team to get documents like this drafted. Also, when you go 25

- 1 WATERHOUSE 10-19-21
- 2 to the legal team, the -- you know, we always
- 3 loop in compliance. And compliance -- when you
- 4 go to the legal team, compliance is part of
- 5 legal team. They're made aware of -- of -- of
- 6 these types of transactions.
- 7 Q. And do you believe that you had
- 8 the -- withdrawn.
- 9 Did you ever tell Mr. Dondero --
- 10 (inaudible) -- did you see those?
- 11 A. Sorry.
- 12 MS. DEITSCH-PEREZ: I did not hear
- the end of that question.
- 14 Q. Did you ever tell Mr. Dondero that
- 15 you signed these two notes?
- 16 A. I don't recall ever -- no, I don't
- 17 recall having a conversation with him.
- Q. Did you ever discuss these two notes
- 19 with him at any time?
- 20 A. The conversation, I recall, was what
- 21 I described earlier. And that is the only time
- 22 I recall ever discussing this.
- Q. Okay. But the corporate accounting
- 24 group had a copy of this -- of these two notes.
- 25 And pursuant to the audit process, the

Page 149 WATERHOUSE - 10-19-21 1 corporate accounting group gave the two notes to PricewaterhouseCoopers in connection with 3 the audit; correct? 4 5 MS. DANDENEAU: Objection to form. 6 Α. Yes. I mean, that is -- yeah, I 7 mean, they -- unless the legal team can also retain copies of items like this. I mean, I 8 don't know everything that they would retain as 9 10 well. The legal team would also, if they 11 had documents as part of audits, turn that over 12 13 to the auditors as well. So it could have been 14 the corporate accounting team. It could be 15 someone on the legal team. All right. So you didn't -- you 16 Ο. didn't draft this note; right? 17 I -- I -- I did not. 18 Α. 19 But somebody at Highland did; is Ο. 20 that fair? MS. DEITSCH-PEREZ: Object to the 21 22 form. I don't know. I mean, we can go to 23 Α. 24 the legal team. I don't -- I'm not sitting behind someone in legal. Maybe they went to 25

Page 150 WATERHOUSE - 10-19-21 1 outside counsel. I have no idea. Did you have any reason to believe 3 Ο. you weren't authorized to sign this note, 4 either of these two notes? 5 6 Α. I think I have already answered that 7 question. Okay. You didn't give these notes 8 Ο. to PricewaterhouseCoopers; correct? 9 10 MS. DANDENEAU: Objection to form. I don't recall giving these to 11 Α. 12 PricewaterhouseCoopers. 13 And in the practice that you have described, somebody in the corporate accounting 14 15 group would have given these two notes to 16 PricewaterhouseCoopers; correct? MS. DANDENEAU: Objection to form. 17 I think I've answered that. 18 Α. I said either the corporate accounting team or maybe 19 20 the legal team. MR. MORRIS: Okay. Why don't we 21 22 take our lunch break here. 23 VIDEOGRAPHER: We're going off the 24 record at 1:04 p.m.

(Recess taken 1:04 p.m. to 1:49 p.m.)

```
Page 151
 1
                   WATERHOUSE - 10-19-21
                 VIDEOGRAPHER: We are back on the
          record at 1:49 p.m.
 3
                 Mr. Waterhouse, did you speak with
 4
     anybody during the break about the substance of
 5
     this deposition?
 6
 7
                 I spoke to -- to Deb and Michelle.
                 About the substance of the
 8
          Ο.
 9
     deposition?
10
          Α.
                 Yes.
                 Can you tell me what you talked
11
          Q.
12
     about?
13
                 MS. DANDENEAU: No. We object on
14
          the basis of privilege.
15
                 Okay. You are going to follow your
          Q.
     counsel's objection here?
16
17
          Α.
                 Yes.
18
          Q.
                 Okay.
19
                 MR. MORRIS: Can we put up on the
20
          screen Exhibit 35.
                 (Exhibit 35 marked.)
21
                 Are you able to see that document,
22
          Ο.
     sir?
23
24
          Α.
                 Yes.
                 Have you ever seen an incumbency
25
          Q.
```

Page 152 1 WATERHOUSE - 10-19-21 certificate before? Α. I have. 3 Do you have a general understanding 4 0. of what an incumbency certificate is? 5 6 Α. I have a general understanding. 7 What is your general understanding? Q. You know, those -- my general 8 Α. understanding is that the incumbency 9 certificate basically lists folks that can --10 are like authorized signers. 11 Okay. And do you see that this is 12 Q. 13 an incumbency certificate for Highland Capital Management Fund Advisors, L.P.? 14 15 Α. Yes. Okay. And if we could scroll down 16 Ο. just a little bit, do you see that it's dated 17 effective as of April 11th, 2019? 18 19 Α. Yes, I see that. 20 Okay. And is that your signature in Q. the middle of the signature block? 21 22 Α. Yes, it is. And by signing it, did you accept 23 Ο. 24 appointment as the treasurer of HCMFA effective as of April 11th, 2019? 25

Page 153 WATERHOUSE - 10-19-21 1 Α. Again, I'm not the legal -- I don't know if this makes me the treasurer or the 3 appointment. I don't know -- I don't know 4 5 that, so I don't -- I don't know if that 6 document -- again, I think -- again, I'm not 7 the legal expert. I think isn't there -aren't there other legal documents that detail 8 who the officers are that could be incorporated 9 or things like that? Again, I don't want to 10 play armchair attorney here. 11 I'm not asking you for a legal 12 Q. 13 conclusion. I'm asking you for your knowledge 14 and understanding. When you signed this document, did you understand that you were 15 16 accepting an appointment as the treasurer of HCMFA? 17 MS. DANDENEAU: Objection to form. 18 19 MS. DEITSCH-PEREZ: Objection, form. 20 Α. Again, I don't think this -- that wasn't my understanding. I don't think this 21 22 makes -- this document makes me the treasurer. What do you think this document --23 Ο. 24 why did you sign this document? 25 MS. DEITSCH-PEREZ: Objection to

```
Page 154
                  WATERHOUSE - 10-19-21
 1
          form.
                MR. MORRIS: You're objecting to the
 3
          form of the question when I asked him why
 4
          did you sign the document? What is the
 5
 6
          basis for the objection?
 7
                MS. DEITSCH-PEREZ: Because, John, I
          think that it does call for a legal
 8
 9
          conclusion other than -- with him saying
10
          because somebody told me to sign this
          document. But if you want to go there,
11
12
          that is fine.
13
                MR. MORRIS: Okay.
14
                MS. DANDENEAU: I don't think --
15
          he's already said he's not a lawyer.
                MR. MORRIS: I'll allow the witness
16
          to answer this question.
17
                Why did you sign this document, sir?
18
          Ο.
19
                I mean, our -- our legal group would
          Α.
20
     bring by these incumbency certificates from
     time to time. I have no idea why they're being
21
     updated, and I was asked to sign.
22
                Did you ask anybody, what is this
23
          Ο.
24
     document?
25
          Α.
                No.
```

```
Page 155
                   WATERHOUSE - 10-19-21
 1
                Did anybody tell you why they needed
          Ο.
     you to sign the document?
 3
          Α.
                Not that I can recall.
 4
 5
          Ο.
                You testified earlier that you
 6
     understood that you served as the acting
 7
     treasurer for HCMFA; correct?
          Α.
 8
                Yes.
                How did you become the acting
 9
          Q.
     treasurer of HCMFA?
10
                MS. DANDENEAU: Objection to form.
11
                I don't -- I don't know the legal --
12
          Α.
     I don't know the legal mechanic of how I became
13
14
     the acting treasurer.
15
                I'm not asking for the legal
          Q.
                I'm asking you as the person who
16
     mechanic.
17
     is --
                MS. DANDENEAU: John, you said --
18
                MR. MORRIS:
19
                              Stop.
20
                MS. DANDENEAU: -- how did you
21
          become the treasurer. That is --
22
                MR. MORRIS: Please stop.
23
                MS. DANDENEAU:
                                 That is a legal
24
          question.
25
                MR. MORRIS: I am not asking any
```

```
Page 156
                  WATERHOUSE - 10-19-21
 1
          legal questions, to be clear. I'm asking
          for this witness' understanding as to how
 3
          he became the acting treasurer of HCMFA.
 4
          If he doesn't know, he can say he doesn't
 5
 6
          know, but this legal stuff is nonsense, and
 7
          I really object to it.
                Sir, I'm asking you a very simple
 8
          Ο.
     question.
 9
10
                MS. DANDENEAU: Argumentative.
                You testified -- you testified that
11
          Ο.
     you became the acting treasurer of HCM --
12
13
     HCMFA; correct?
14
          Α.
                Yes.
15
          Q.
                How did that happen?
                MS. DANDENEAU: Again, object to
16
          form.
17
                MR. MORRIS: I can't wait to do this
18
19
          in a courtroom. Good God.
20
          Q.
                Go ahead, sir.
                I don't know the exact process of
21
          Α.
     how that happened.
22
                Do you have any idea whether signing
23
          Ο.
24
     this document was part of the process?
25
                MR. MORRIS: You know what --
```

Page 157 WATERHOUSE - 10-19-21 1 MS. DANDENEAU: Objection. MR. MORRIS: -- withdrawn. You guys 3 want to do this, I can't wait. I can't 4 wait. This is the craziest stuff ever. 5 6 MS. DANDENEAU: John, he said he's 7 not a lawyer, and you are asking him for a legal conclusion, and he says he doesn't 8 9 know, and you persist. 10 MR. MORRIS: Okay. MS. DANDENEAU: So you can ask these 11 12 questions --13 MR. MORRIS: Did anyone -- please 14 stop talking. 15 MS. DANDENEAU: -- at another point -- no, no, no, I'm entitled to talk, 16 If you're going to make these 17 too; right? accusations as if we're trying to stonewall 18 you, this is not the witness to ask that 19 20 question. MR. MORRIS: I can't -- I can't 21 22 wait -- I can't wait to do this in a courtroom. I will just leave it at that. 23 24 MS. DANDENEAU: That's right, I'm 25 sure you can't.

Page 158 WATERHOUSE - 10-19-21 1 Q. Did anyone ever tell you, sir, that even though you were the acting treasurer of 3 HCMFA, that you were not authorized to sign the 4 5 two promissory notes that we looked at before lunch? 6 I'm not sure I understand the 7 Α. I wasn't -- I mean, I'm -- I'm the 8 current acting treasurer. 9 Did anybody ever tell you at any 10 time that even though you were the acting 11 treasurer of HCMFA, that you were not 12 13 authorized to sign the two promissory notes 14 that we looked at before lunch? 15 MS. DANDENEAU: Objection to form. Α. Not that I recall. 16 Did anybody ever tell you at any 17 Ο. 18 time that you were not authorized to sign the two promissory notes that we looked at before 19 20 lunch? Not that I recall. 21 Α. 22 Did anybody ever tell you at any Ο. time that you should not have signed the two 23 24 promissory notes that we looked at before 25 lunch?

Page 159 WATERHOUSE - 10-19-21 1 Not that I recall. Α. Did you ever tell anybody at any 3 Ο. time that you weren't authorized to sign the 4 5 two promissory notes that we looked at before 6 lunch? 7 Not that I recall. Α. Did you ever tell anybody at any 8 Ο. time that you made a mistake when you signed 9 the two promissory notes that we looked at 10 before lunch? 11 Not that I recall. 12 Α. 13 As you sit here right now, do you 0. 14 have any reason to believe that you were not 15 authorized to sign the two documents that we looked at before lunch? 16 MS. DANDENEAU: Objection to form. 17 If -- if this is the -- the valid 18 Α. incumbency certificate, I mean, this does --19 20 this does detail who the signers are. Okay. And looking at that document, 21 0. does that give you comfort that you were 22 authorized to sign the two promissory notes 23 24 that we looked at before lunch? 25 MS. DEITSCH-PEREZ: Object to the

```
Page 160
                  WATERHOUSE - 10-19-21
 1
          form.
                MS. DANDENEAU: Objection, form.
 3
          Α.
 4
                Yes.
 5
                As of October 20th -- withdrawn.
          Ο.
 6
                I'm trying to take your mind back to
 7
     a year ago, October 2020. Do you recall at
     that time that the boards of the retail funds
 8
     were making inquiries about obligations that
 9
     were owed by the advisors to Highland in
10
     connection with their 15(c) review?
11
                MS. DANDENEAU: Objection to form.
12
13
          Α.
                I don't -- I don't recall.
14
          Q.
                As of October 2020, you had no
15
     reason to believe you weren't authorized to
     sign the two promissory notes that we just
16
     looked at; correct?
17
                MS. DANDENEAU: Objection, form.
18
19
                MS. DEITSCH-PEREZ: Objection to
20
          form.
                I didn't think about it in October
21
          Α.
     of 2020, but I mean --
22
                Did you have any reason to believe
23
          0.
24
     at that time that you weren't authorized to
25
     sign the two notes that we just looked at?
```

Page 161 WATERHOUSE - 10-19-21 1 Α. Not that I'm aware, no. Did you have any reason to believe a 3 Ο. year ago that you made a mistake when you 4 5 signed those two notes? 6 Α. Not that I'm aware. 7 Q. A year ago you believed that HCMFA owed Highland the unpaid principal amounts that 8 were due under those two notes; correct? 9 They're -- they're promissory notes 10 Α. that were -- as you presented, that were --11 that were executed. Whether they're valid or 12 13 if there's other reasons, I didn't -- I don't 14 know. 15 I'm not asking you whether they're Ο. valid or not. I'm asking you for your state of 16 mind. A year ago you believed that HCMFA 17 was -- was obligated to pay the unpaid 18 principal amount under the two notes that you 19 20 signed; correct? Yeah, I'm -- I'm -- yes. 21 Α. 22 Thank you. Are you aware -- you're Ο. aware that -- that in 2017, NexPoint issued a 23 24 note in favor of Highland in the approximate amount of \$30 million; correct? 25

Page 162 WATERHOUSE - 10-19-21 1 Α. I'm -- I'm -- I'm generally aware. Okay. And are you generally aware 3 Ο. that from time to time, after the note was 4 issued by NexPoint, that moneys were applied to 5 6 principal and interest that were due under the 7 NexPoint note? Α. Yes, I'm generally aware. 8 Okay. And did anybody ever tell you 9 Q. that the payments that were made against the 10 NexPoint notes were made by mistake? 11 Α. 12 Yes. 13 And is it the one payment that we talked about earlier today? 14 15 Α. We talked about a lot of things 16 today. What payment are we talking about? Okay. Who told you that any payment 17 0. made against the NexPoint note was made by 18 mistake? 19 20 Α. D.C. Sauter. When did Mr. Sauter tell you that? 21 Ο. I don't -- I don't remember 22 Α. specifically. 23 24 Do you remember what payments --Q.

Sometime -- sometime this year.

25

Α.

```
Page 163
                  WATERHOUSE - 10-19-21
 1
                Sometime in 2021?
          Q.
          Α.
                Yes.
 3
                Do you remember what payment he was
 4
          Ο.
     referring to?
 5
 6
          Α.
                It was the -- the payment made in
 7
     January of 2021 or -- yeah, January of -- of
     this -- January of 2021.
 8
                Okay. So did anybody ever tell you
 9
          Q.
     at any time that any payment that was made
10
     against principal --
11
                And -- and -- and -- hold on, and it
12
          Α.
     may have been other -- again, it may have been
13
     that payment or -- or there may have been what
14
15
     he was explaining, a misapplication of prior
16
     payments as well.
                Can you -- can you give me any
17
     specificity -- withdrawn.
18
19
                Withdrawn. Can you tell me
20
     everything that Mr. Sauter told you about --
     about errors in relation to payments made
21
22
     against principal and interest due under the
     NexPoint note?
23
24
                MS. DANDENEAU: Can I just --
25
                MR. RUKAVINA: Hold on. Hold on.
```

```
Page 164
                  WATERHOUSE - 10-19-21
 1
          I'm going to object here, and I'm going to
          instruct the witness not to answer
 3
          depending on the discussion that you had --
 4
 5
          Mr. Waterhouse, I'm the lawyer for
 6
          NexPoint, and as everyone here knows, D.C.
 7
          Sauter is in-house counsel.
                So if you and Mr. Sauter were having
 8
          a factual discussion and him preparing his
 9
          affidavit, et cetera, then go ahead and
10
          answer that. But if you were having a
11
          discussion as to our legal strategy in this
12
13
          lawsuit, or anything having to do with
14
          that, then do not answer that.
15
                And if you need to talk to either
          your counsel or me about that, then we need
16
          to have that discussion now.
17
                Okay. Yeah, I don't -- I don't
18
          Α.
     really know how to make that distinction, so
19
20
     maybe I need to talk to counsel before I
21
     answer, or if I can answer.
22
                Let me just ask you this question:
     Did -- did you have any conversation with
23
24
     Mr. Sauter about any payment of principal and
25
     interest prior to the time that you left
```

Page 165 WATERHOUSE - 10-19-21 1 Highland's employment, or did it happen after 2. you left Highland's employment? 3 I don't -- I don't recall if -- I 4 don't recall. I mean, it was sometime in 2021. 5 I don't remember if it was before or after I 6 was let go from Highland. 7 Okay. So -- so nobody told you 8 Ο. prior to 2021 that any error or mistake was 9 made in the application of payments against 10 principal and interest due on the NexPoint 11 note. Do I have that right? 12 13 Α. Yeah, I don't -- I don't recall this 14 being in 2020. 15 Ο. Okay. And it didn't happen in 2019; 16 correct? I don't recall that happened. 17 Α. And it didn't happen in 2018; 18 Q. 19 correct? 20 Α. I don't -- I don't recall that happening. 21 22 And it didn't happen in 2017; Ο. 23 correct? 24 Α. I don't recall. 25 But -- but you believe the Q.

Case 3:21-cv-00881-X Docume Exhibit-A0 Page 2150912446 Page 51 of 282 PageID 46974 Page 166 WATERHOUSE - 10-19-21 1 conversation took place in 2021. You just don't remember if it was before or after you 3 left Highland's employment. Do I have that 4 5 right? 6 It was sometime this year. I don't -- I don't remember. 7 Okay. Did you report this 8 Ο. conversation to Mr. Seery at any point? 9 10 Α. I don't believe so. Did you report this conversation to 11 Q. anybody at DSI at any time? 12 13 Α. I don't recall. 14 Q. Do you have -- you don't have a 15 recollection of ever doing that; correct? Yeah, that's right. I don't recall 16 Α. doing that. 17 Do you recall telling anybody at 18 Pachulski Stang about the conversation you 19 recall with Mr. Sauter? 20 No, I don't -- I don't recall. 21 Α. 22 Did you tell any of the independent Ο. board members about your conversation with 23

I don't recall.

24

25

Mr. Sauter?

Α.

Case 3:21-cv-00881-X Docume Dxhiba-A0 Palge 2160912446 Page 52 of 282 PageID 46975 Page 167 WATERHOUSE - 10-19-21 1 Did you tell any of the employees at 2. Ο. Highland before you left Highland's employment 3 about this call that you had with Mr. Sauter? 4 MS. DANDENEAU: Objection to form. 5 No, I don't -- no, I don't recall. 6 Α. 7 NexPoint -- to the best of your Ο. knowledge, did NexPoint ever file a proof of 8 9 claim against Highland to try to recover moneys that were mistakenly paid against the principal 10 and interest due under the note? 11 12 Α. Okay. Hold on. You are saying did 13 NexPoint Advisors file a proof of claim to 14 Highland for errors related to payments under 15 the NexPoint note to Highland? 16 Ο. Correct. I'm -- I'm -- I'm not -- I'm not 17 Α. 18 aware. 19 Ο. Are you aware --20 Α. I'm not the legal person here, I don't know. 21 22 I'm just asking for your knowledge, Ο. sir. 23

- 24 Α. Yeah, I don't know. I'm not aware.
- 25 Are you aware of any claim of any Q.

Case 231e 02310 03 0206 - Sogic 815 of t Filled 1 07216 / 210 / 225 / 124 red End 21 01/29 / 213 21:57 a 0 1:57 Case 3:21-cv-00881-X Docume Dxhiba-A0 Palge 2170912446 Page 53 of 282 PageID 46976 Page 168 WATERHOUSE - 10-19-21 1 kind that NexPoint has ever made to try to 2. recover the amounts that it contends were -- or 3 that Mr. Sauter contend were mistakenly applied 4 5 against principal and interest due under the NexPoint note? 6 7 Α. I'm not aware. MS. DANDENEAU: Objection to form. 8 Q. Okay. The advisors' agreements with 9 the retail funds are subject to annual renewal; 10 11 correct? Α. 12 Yes. 13 Ο. And do you participate in the 14 renewal process each year? 15 Α. Yes. What role do you play in the renewal 16 Ο. 17 process?

- 18 A. I'm -- I'm asked by the retail board
- 19 to walk-through the advisors financials.
- Q. And do you do that in the context of
- 21 a board meeting?
- 22 A. Yes, it is -- yes, it is typically
- 23 done in a board meeting.
- Q. And do you recall the time --
- 25 does -- does the renewal process happen around

Page 169

- 1 WATERHOUSE 10-19-21
- 2 the same time each year?
- 3 A. Yes, it is -- it is around the same
- 4 time every year.
- 5 Q. And what -- what time period of the
- 6 year does the renewal process occur?
- 7 A. Approximately the September
- 8 timeframe.
- 9 Q. During that process, in your
- 10 experience, does the board typically conduct
- its own diligence and ask for information?
- 12 A. Does the board ask for lots of -- I
- 13 mean, just -- I mean, lots of information as a
- 14 part of that -- that -- as part of that board
- 15 meeting and that process.
- Q. Okay. And do you recall that the
- 17 process in 2020 spilled into October?
- 18 A. Yes. Yes.
- 19 Q. Okay. And as part of the process in
- 20 2020, the retail board asked -- asked what are
- 21 referred to as 15(c) questions; right?
- 22 A. I quess I don't want to be -- they
- 23 asked 15(c) -- are you saying they asked 15(c)
- 24 questions and this is why it went into October
- 25 or --

```
Page 170
                   WATERHOUSE - 10-19-21
 1
          Ο.
                No, I apologize.
                Do you have an understanding of
 3
     what -- of what 15(c) refers to in the context
 4
 5
     of the annual renewal process?
 6
          Α.
                Yes, generally.
 7
                All right. What is your general
          Q.
     understanding of the term "15(c)" in the
 8
 9
     context of the annual renewal process?
          Α.
                I -- I think 15(c) is the section
10
     that -- that -- you know, that -- that the
11
     board has to evaluate every year, the retail
12
13
     board.
             They have to, you know, go through,
14
     evaluate, and go through that approval process
15
     on a yearly basis.
16
          Q.
                Okay.
17
                MR. MORRIS: Can we put up on the
          screen Exhibit 36, please.
18
                 (Exhibit 36 marked.)
19
20
                MR. MORRIS:
                              I quess let's just
          start at the bottom so Mr. Waterhouse can
21
22
          see what is here.
                You see this begins with an email
23
          Ο.
24
     from Blank Rome to a number of people.
25
                MR. MORRIS: And if we can scroll
```

Page 171 WATERHOUSE - 10-19-21 1 up -- keep going just a little bit. You will see that there is an email 3 Ο. from Lauren Thedford to Thomas Surgent and 4 5 others where she reports that she was attaching 6 and reproducing below additional 15(c) 7 follow-up questions from the board. Do you see that? 8 9 Α. Yes. And do you see Question No. 2 asks 10 whether there are any material outstanding 11 amounts currently payable or due in the future 12 13 (e.g., notes) to HCMLP by HCMFA or NexPoint 14 Advisors or any other affiliate that provides 15 services to the funds? 16 Do you see that? 17 Α. Yes. And -- and did you -- do you recall 18 Ο. that in -- in October of 2020 the retail boards 19 20 were asking for that information? I don't recall it, but there --21 Α. 22 they're obviously asking in this email. 23 Q. Okay. 24 MR. MORRIS: Can we scroll up a 25 little bit, please.

Case 3:21-cv-00881-X Documetaxhiiba-A0 Paled 2210912446 Page 57 of 282 PageID 46980 Page 172 WATERHOUSE - 10-19-21 1 And then do you see that Q. Ms. Thedford includes you on the email string 3 on Tuesday, October 6th, at 5:52? 4 5 Α. Yes. 6 Ο. And she asks you and Dave Klos and 7 Kristin Hendrix for advice on that particular Request No. 2 that I have just read; right? 8 9 Α. Yes. Okay. Can you tell me who 10 Ms. Thedford is? 11 She was an attorney that was in the 12 Α. legal group. 13 14 Ο. At Highland Capital Management, 15 L.P.? I'm -- I'm -- I'm -- I don't 16 Α. remember if she was an employee of Highland or 17 any of the advisors. 18 19 Okay. Do you know if she served as 0. 20 the corporate secretary for both HCMFA and NexPoint? 21 22 Α. Yes.

And -- okay.

23

24

Q.

Do you know whether Ms. Thedford

Page 173 1 WATERHOUSE - 10-19-21 funds as we defined that term? Α. Yes. 3 What is your understanding of the 0. 4 positions that Ms. Thedford held at the retail 5 funds? 6 7 I -- I recall her being an officer. Α. I don't recall her title. Is she still an officer at 9 Okay. Q. any of the retail funds today? 10 Α. 11 No. Do you know when she ceased to be an 12 Q. officer of the retail funds? 13 Approximately. 14 Α. 15 And when did she approximately cease Q. to be an officer of the retail funds? 16 It was in -- it was in early of 17 Α. 2021. 18 Okay. Do you know when she became 19 Ο. 20 an officer of the retail funds? I don't recall. 21 Α. To the best of your recollection, 22 Ο. was she an officer of the retail funds in 23 24 October of 2020? 25 I believe so. Α.

Page 174 WATERHOUSE - 10-19-21 1 Q. Okay. Do you know what title she held in her capacity as an officer, if any? 3 I told you I don't remember. 4 Α. 5 Okay. So she sends this email to Ο. 6 you at 5:52 p.m. on October 6th. 7 And if we can scroll up to the response, you responded a minute later with a 8 9 one-word answer: Yes. 10 Do you see that? Α. 11 Yes. And -- and yes is -- yes was in 12 Q. 13 response to the retail board's Question No. 2, 14 right, whether there are any material 15 outstanding amounts currently payable or due in the future? 16 17 Yes. Α. 18 MR. MORRIS: And can we scroll up to 19 see what happened next. 20 So Ms. Thedford writes back to you a Ο. few minutes later and she asks whether you 21 could provide the amounts. 22 23 Do you see that? 24 Α. Yes. And then you respond further and you 25 Q.

Page 175 WATERHOUSE - 10-19-21 1 refer her to the balance sheet that was provided to the board as part of the 15(c) 3 4 materials. 5 Do you see that? 6 Α. Yes. 7 And -- and did the advisors provide Q. to the board certain balance sheets in 2020 in 8 connection with the 15(c) review? 9 10 Α. Yes, they did. Okay. And were the amounts that 11 Ο. were outstanding or that were to be due in the 12 13 future by the advisors to Highland included in the liability section of the balance sheet that 14 15 was given to the retail board? Notes would be reflected as 16 Α. Yes. liabilities. 17 Okay. And --18 Ο. 19 If I'm understanding your question Α. 20 correctly. You are. And -- and -- and those 21 Ο. 22 liabilities you -- you were -- you believed were responsive to the retail board's question; 23 24 correct? 25 Α. Yes.

Page 176 WATERHOUSE - 10-19-21 1 Ο. Okay. And then if we can scroll up, you see Ms. Thedford responds to you 3 nine minutes later with a draft response. 4 5 Do you see that? 6 Α. Yes. 7 And she says that she is taking from Ο. the 6/30 financials certain information about 8 amounts that were due to HCMLP and affiliates 9 as of June 30th, 2020. 10 Do you see that? 11 Α. I do. 12 13 Okay. And did you believe, as the Ο. treasurer of NexPoint and HCMFA and as the CFO 14 15 of Highland, that the information that Ms. Thedford obtained from the 6/30 financials 16 was accurate and responsive in relation to the 17 retail fund board's question? 18 19 I just want to make sure I Α. 20 understand the question. Are you saying that the financial 21 22 information provided to the retail board as part of the 15(c) process, which included 23 24 financial statements as of June 30th of 2021, 25 did I feel like those were responsive to their

```
Page 177
 1
                  WATERHOUSE - 10-19-21
     questions?
 3
          Q.
                Yes.
 4
          Α.
                Yes.
 5
                Thank you.
          Ο.
 6
                MS. DEITSCH-PEREZ: John, it is not
 7
          in the chat yet. Can you just make sure it
          gets put in there.
 8
 9
                MR. MORRIS: Sure.
10
                MS. CANTY: I put it in there.
          think maybe I just sent it directly, so let
11
          me make sure it says to everyone. But I
12
13
          did put it in there. I will try again.
14
                MR. MORRIS: Thank you, La Asia.
15
                MS. DANDENEAU: What number is it.
16
                MR. MORRIS: What, the Bates number?
17
                MS. DEITSCH-PEREZ: No, the --
          this -- yeah, 36 is not in the chat.
18
19
                MR. MORRIS: Okay. We'll get it.
20
                MS. DANDENEAU: I think that
          Ms. Canty just sent it to me originally.
21
22
          Sorry.
                MR. MORRIS: Okay. We will get it
23
24
          there.
25
                MS. CANTY: Okay. It is there now
```

```
Page 178
                  WATERHOUSE - 10-19-21
 1
          for everyone.
                MS. DEITSCH-PEREZ: Got it.
                                               Thank
 3
 4
          you.
 5
                Do you recall if the proposed
          Ο.
 6
     response that Ms. Thedford crafted was
 7
     delivered to the retail board with the -- with
     the yellow dates having been completed?
 8
 9
          Α.
                I don't know.
10
                MR. MORRIS: Davor, I'm going to ask
          that the advisors and -- the advisors of
11
12
          both HCMFA and NexPoint produce to me any
13
          report that was given to the retail board
14
          concerning the promissory notes at issue,
15
          including the obligations under the notes.
16
                Do you know -- do you know if
          Ο.
     ultimately NexPoint informed the retail board
17
     in response to its question that NexPoint owed
18
19
     Highland approximately 23 or $24 million?
20
                MS. DANDENEAU: Objection to the
          form.
21
22
                Sorry, are you asking, did NexPoint
          Α.
     tell the retail board that it owed Highland?
23
24
                Let me ask a better question,
          Ο.
25
     Mr. Waterhouse.
```

Page 179 WATERHOUSE - 10-19-21 1 Did -- do you know if anybody ever answered the retail board's question that was 3 Number 2? 4 5 Α. I don't -- I can't say for sure. 6 Ο. Okay. Do you recall -- I think you 7 testified earlier that you walked through the advisors' financials with the retail board; 8 correct? 9 10 Α. Yes. And as part of that process, did you 11 Ο. disclose to the retail board the obligations 12 13 that NexPoint and HCMFA had to Highland under 14 promissory notes? 15 Α. The retail board, as I stated earlier, receives financial information, 16 balance sheet, income statement information 17 from the advisors. That information is 18 19 provided to the retail board in connection with 20 the 15(c) process. So any notes between the advisors 21 22 and the Highland would be -- anything would be detailed in those financial statements. 23 24 Do you recall in 2020 ever speaking Ο. with the retail board about the advisors' 25

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Page 180
                  WATERHOUSE - 10-19-21
 1
     obligations under the notes to Highland?
                MS. DANDENEAU: Objection to form.
 3
                MS. DEITSCH-PEREZ: Object to the
 4
 5
          form.
 6
          Α.
                I don't recall specifically.
 7
                Do you have any general recollection
          Ο.
     of discussing with the retail board the
 8
     advisors' obligations to Highland under the
 9
     notes that they issued?
10
                MS. DANDENEAU: Object to the form.
11
                MS. DEITSCH-PEREZ: Object to the
12
13
          form.
14
          Α.
                I just recall generally just -- it
15
     is just -- I present the financial statements,
     and if they have questions, I answer their
16
     questions and walk them through.
17
                I don't recall what they asked.
18
                                                   Ι
     don't recall where the discussion went.
19
20
     don't recall anything of that nature.
                Okay. Do you know if anybody on
21
          Ο.
22
     behalf of HCMF -- HCMFA ever told the retail
     board that HCMFA had no obligations under the
23
24
     two 2019 notes that you signed?
                                      Withdrawn.
25
                Do you know whether anybody on
```

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- 1 WATERHOUSE 10-19-21
- 2 behalf of HCMFA ever told the retail boards
- 3 that you weren't authorized to sign either of
- 4 the two 2019 notes?
- 5 MS. DANDENEAU: Objection to form.
- 6 A. I'm not aware.
- 7 Q. Are you aware of anybody on behalf
- 8 of HCMFA ever telling the retail boards that
- 9 your execution of the two 2019 notes was a
- 10 mistake?
- MS. DANDENEAU: Objection to form.
- 12 A. I'm not aware.
- Q. Are you aware of anybody on behalf
- 14 of HCMFA ever telling the retail boards that
- 15 HCMFA did not have to pay the amounts reflected
- in the two notes that you signed in 2019?
- 17 A. I'm not aware.
- 18 Q. Do you know whether anybody ever
- 19 told the retail boards -- withdrawn.
- 20 Do you know whether anybody ever
- 21 told the retail boards that Highland has
- 22 commenced a lawsuit to recover on the two notes
- that you signed in 2019?
- A. I'm not aware.
- Q. Are you aware of anybody informing

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- 1 WATERHOUSE 10-19-21
- 2 the retail boards that Highland has sued to
- 3 recover on the NexPoint note?
- 4 A. I'm not aware.
- 5 Q. Do you know whether anybody ever
- 6 told the retail board that Highland had
- 7 declared a default with respect to the two
- 8 HCMFA notes that you signed in 2019?
- 9 A. I'm not aware.
- 10 Q. Are you aware of anybody ever
- 11 informing the retail boards that Highland had
- 12 declared a default under the NexPoint note?
- 13 A. I'm not aware.
- 14 Q. Are you aware of anybody telling the
- 15 retail board that Highland made a demand for
- 16 payment under the 2019 notes that you signed on
- 17 behalf of HCMFA?
- 18 A. I'm not aware.
- 19 O. Let's -- let's see if there is a
- 20 response to Ms. Thedford's email, if we can
- 21 scroll up.
- Do you see you responded to
- 23 Ms. Thedford five minutes after she provided
- 24 the draft response to you?
- 25 A. Yes.

Case 3:21-cv-00881-X Docume Dxhiba-A0 Palge 2320912446 Page 68 of 282 PageID 46991 Page 183 WATERHOUSE - 10-19-21 1 Ο. Okay. And do you see that Dustin Norris is copied on this email? 3 Yes, he is. 4 Α. Great. Do you know whether 5 Ο. 6 Mr. Norris held any positions at either of the 7 advisors as of October 6, 2020? I will go back to -- I'm not the 8 Α. legal expert of what appoints you or how or 9 why, but you did see Dustin's name on the 10 incumbency certificate that you produced 11 earlier. 12 13 Do you know what his title was in October of 2020? 14 15 MS. DANDENEAU: Objection to form. Α. I don't -- I don't recall. 16 Was he -- did he have a title with 17 Ο. each of the advisors, to the best of your 18 recollection? 19 20 Α. I don't recall. Do you know why he is included on 21 Ο.

- 22 this email string?
- I didn't add Dustin. It looks like 23 Α.
- 24 Lauren did. I don't know why she added him or
- not. You would have to ask her. 25

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1 WATERHOUSE - 10-19-21
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- Q. Does Mr. Norris play a role in
- 3 formulating the advisors' responses to the
- 4 questions asked by the retail board in
- 5 connection with the 15(c) annual review?
- 6 MS. DANDENEAU: Objection to form.
- 7 A. He -- Dustin Norris is there in the
- 8 board meetings. But -- so he has a role, yes.
- 9 Q. Okay. And does Mr. Norris hold any
- 10 positions, to the best of your knowledge, in
- 11 relation to any of the retail funds?
- 12 A. I don't -- I don't believe he does.
- Q. How about Mr. Post, do you know
- 14 whether Mr. Post holds any position in either
- 15 of the advisors?
- 16 A. I mean, he -- he -- yes.
- 17 Q. What is your understanding of the
- 18 positions that Mr. Post holds in relation to
- 19 the advisors?
- MS. DANDENEAU: Objection to form.
- 21 A. He is an employee of NexPoint
- 22 Advisors. He is also the chief compliance
- 23 officer for -- for NexPoint.
- Q. Who is the chief compliance officer
- 25 for HCMFA, if you know?

Page 185 WATERHOUSE - 10-19-21 1 MS. DANDENEAU: Objection to form. Α. That would be Jason as well. 3 Okay. Now, looking at your 4 Ο. 5 response, you noted initially that nothing was owed under shared services. Do I have that 6 right in substance? 7 Α. I think I'm being responsive 8 to Lauren's question here, whether any of the 9 shared service invoices are outstanding. 10 Right. 11 Q. Α. 12 Yes. 13 Ο. And that is because -- and that is 14 because the retail the retail board has asked 15 for the disclosure of all material obligations that were owed to HCMLP either then or in the 16 future; isn't that right? 17 MS. DANDENEAU: Objection to form. 18 19 We can go back down and look. Ο. 20 Α. Look, I don't know if that's a material item, I mean, again, but sure. 21 22 Okay. But there were no shared Ο. services outstanding; correct? 23 24 MS. DANDENEAU: Objection to form. 25 That is what this email seems to Α.

Page 186 WATERHOUSE - 10-19-21 1 2. indicate. And you wouldn't have written it if 3 Ο. you didn't believe it to be true at the time; 4 5 correct? 6 Α. Correct. 7 And when you referred to shared Ο. services outstanding, what you meant there was 8 9 that neither NexPoint nor HCMFA owed Highland any money under the shared services agreements 10 that they had with Highland as of October 6th, 11 2020; right? 12 13 Α. I don't know if it is as of October 14 6, 2020 or if it was from -- like through the 15 financials -- through the date of the financials as of June 30. 16 Okay. And then you noted that 17 Ο. HCMA -- the HCMFA note is a demand note; right? 18 19 Α. Yes. 20 And then you referred Ms. Thedford Ο. to Kristin Hendrix for the term of the NexPoint 21 22 note. Do I have that right? 23 Α. Yes. 24 And then you refer to that agreement Ο. that is referenced in the 2018 audited 25

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- 1 WATERHOUSE 10-19-21
- 2 financials about Highland's agreement not to
- 3 make demand upon HCMFA until May 2021; correct?
- 4 A. Correct.
- 5 Q. And then -- and then the next thing
- 6 you write is that the attorneys think that BK
- 7 doesn't change that, but don't know for sure at
- 8 the end of the day.
- 9 Do you see that sentence?
- 10 A. Yes.
- 11 Q. Which attorneys were you referring
- 12 to?
- 13 A. I don't remember.
- Q. Did you have a conversation with
- 15 attorneys concerning whether the bankruptcy
- 16 would change or alter in any way the agreement
- 17 not to make a demand under the HCMFA note?
- 18 A. Look, yeah, I mean, I don't
- 19 specifically remember, but generally, I mean,
- 20 it is in this email. I don't -- I don't -- I
- 21 don't -- I don't remember who I talked to or,
- 22 you know, was it inside counsel, outside
- 23 counsel, but obviously I talked to somebody.
- Q. Do you have any recollection --
- 25 A. Well, I don't even know if it's --

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1 WATERHOUSE - 10-19-21
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- 2 actually, it may not even have been me. I say
- 3 the attorneys in, you know, a lot of -- like I
- 4 talked about the team.
- 5 It could have been someone on the
- 6 team, like, hey, we need to run this down, and
- 7 maybe they talked to attorneys again and
- 8 relayed that information to me.
- 9 So I really don't know if I spoke or
- 10 someone else did or -- or, I mean, and maybe it
- 11 wasn't even from corporate accounting. Maybe
- 12 it was, you know, other -- I'm kind of
- 13 summarizing, you know, again, so I don't really
- 14 know -- I can't really say for sure. I don't
- 15 remember how I came about of this knowledge.
- 16 Q. I appreciate your efforts,
- 17 Mr. Waterhouse, but I will just tell you that
- if I ask a question and you don't know the
- 19 answer or you don't recall, I'm happy to accept
- 20 that. I don't -- I don't want you to
- 21 speculate, so I want to be clear about that.
- 22 So I appreciate it.
- Let me just ask you simply: Do you
- 24 know what attorneys -- can you identify any of
- 25 the attorneys who thought that the bankruptcy

Page 189 WATERHOUSE - 10-19-21 1 process didn't change the agreement? Α. I don't recall. 3 0. Okay. Perfect. 4 And then let's look at the last 5 6 sentence. It says, quote: The response should 7 include, as I covered in the board meeting, that both entities have the full faith and 8 backing from Jim Dondero, and to my knowledge 9 that hasn't changed. 10 Do you see that? 11 Α. 12 Yes. 13 Ο. Okay. Prior to October 6th, 2020, had you told the retail board that HCMFA and 14 15 NexPoint have the full faith and backing from Jim Dondero? 16 17 Α. Yes. Do you remember in the context in 18 Q. which you told the retail board that? 19 20 Α. I mean, generally, yes. Tell me what you recall. 21 Ο. 22 So we were walking through the Α. financials from the advisors; right? So as I 23 described to you, you have got HCMFA and NPA. 24 And these -- the financials, you know, show 25

Page 190 WATERHOUSE - 10-19-21 1 they have liabilities on them that exceed assets. 3 So the retail board has asked, okay, 4 you know, how -- you know, if -- if these 5 6 liabilities come due or they're payable, you know, how does that come about? 7 And, you know, the response is, 8 well, the advisors have the -- the full faith 9 and backing from -- from Jim Dondero. 10 And how did you know that the 11 advisors had the full faith and backing from 12 13 Jim Dondero? What was the basis for that 14 statement that you made to the retail board? 15 Α. I talked to Jim about it at some 16 point in the past. And did you tell Mr. Dondero that 17 you were going to inform the retail board that 18 the advisors had his full faith and backing 19 20 before you actually told that to the retail board? 21 I don't recall having that 22 conversation. 23 24 Do you recall if you ever informed Ο.

Mr. Dondero that you had disclosed or told the

25

Page 191 WATERHOUSE - 10-19-21 1 retail board that the advisors had the full faith and backing of Mr. -- Mr. Dondero? 3 MS. DEITSCH-PEREZ: Object to the 4 form. 5 6 Α. I don't recall discussing that with 7 him at the time. When you told this to the board, was 8 Ο. Mr. Dondero participating in the discussion? 9 10 Α. Not that I recall. Withdrawn. Was it not -- withdrawn. 11 Q. Do you recall whether -- when you 12 13 covered this issue with the board, was that in 14 a -- a Zoom call or a Webex call? Was it a 15 telephone call? Was it in-person? Like where were you physically in relation to the board? 16 I believe I was at home. 17 Α. Okay. Can you identify every person 18 Q. that you recall who was present for this 19 20 disclosure other than -- other than the board members themselves? 21 22 MS. DEITSCH-PEREZ: Object to the form. 23 24 I don't recall everyone on the call. Α. Can you identify anybody who was on 25 Q.

Case 254e 02300 5 9016 - Socio 85 40 File 1 10 Case 3:21-cv-00881-X Docume Dxhliba-A0 Palgel 2410912446 Page 77 of 282 PageID 47000 Page 192 1 WATERHOUSE - 10-19-21 the call? 2. Α. Other than the board members? 3 0. 4 Yes. Lauren Thedford. I mean, there 5 Α. 6 are -- there are many -- my section is just one of many sections that are just -- you know, as 7 you can appreciate, this is a long board 8 meeting. 9 I can't recall specifically, really 10 even generally, or who was on when this was 11 discussed. But Lauren was typically on for the 12 13 entire time. 14 I apologize if I asked you this, but 15 do either of Mr. Norris or Mr. Post hold any positions relative to the retail funds? 16 I think you asked me this already, 17 Α. 18 John. Okay. I just don't recall. Can you 19 0.

- 20 just refresh my recollection if I did, in fact,
- 21 ask you the question?
- 22 A. I don't believe -- if we can go
- 23 back. I don't believe Mr. Norris has a title
- 24 at the retail funds. Mr. -- and Mr. Post is
- 25 the CCO of the advisor, the advisors.

Page 193 WATERHOUSE - 10-19-21 1 Okay. Do you know if either of them Ο. have a position with the retail board -- with 3 the retail funds? 4 I don't believe Mr. Norris has a 5 Α. 6 position with the retail funds. 7 All right. What about Mr. Post? Q. Mr. Post is the CCO of the advisors. Α. 8 9 Okay. Does he hold any position --Q. 10 I don't believe so. Α. -- with the retail funds? 11 Q. I don't believe so. 12 Α. 13 Q. Okay. I don't know if being the CCO for 14 Α. 15 the advisor conveys something for the retail funds. Again, I am not -- that is the legal 16 compliance part of it. I don't know. 17 Why did you tell the retail board 18 Ο. that the advisors have the full faith and 19 20 backing from Mr. Dondero? MS. DANDENEAU: Objection to form. 21 It is -- it is -- it is what has 22 Α. been discussed with them prior. 23 24 And were you -- were you trying to Ο.

give them comfort that even though the

25

Page 194 WATERHOUSE - 10-19-21 1 liabilities exceeded the assets that the 2. advisors would still be able to meet their 3 obligations as they become due? 4 MS. DANDENEAU: Objection to form. 5 6 MS. DEITSCH-PEREZ: Object form. 7 I -- I can't -- I don't remember Α. specifically the conversation, but generally --8 you know, generally, yes. And that is why --9 but, you know, again, in this email saying, you 10 know, I am sure I qualified it with the retail 11 board, you know, as I said I like -- you know, 12 13 to my knowledge, that hasn't changed. But, again, generally -- generally that is what I 14 15 remember. Okay. Do you recall if in the 16 Ο. advisors' response to the retail board's 17 question if the response included any statement 18 19 concerning Mr. Dondero and -- and the full 20 faith and backing that he was giving to the advisors? 21 MS. DEITSCH-PEREZ: Object to the 22 23 form. 24 I don't -- I don't remember Α. 25 specifically what was provided.

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                   WATERHOUSE - 10-19-21
 1
          Q.
                Okay.
                And I don't really -- I don't really
 3
          Α.
     remember generally either.
 4
 5
          Ο.
                Okay.
 6
                MR. MORRIS: So -- so, again, I'm
 7
          just going to ask Mr. Rukavina if your
          clients can produce as soon as possible the
 8
 9
          15(c) response, the written response that
10
          the advisors made, if any, to the board's
          Ouestion No. 2.
11
                I'm not looking for the whole
12
          response, but I certainly want the response
13
14
          to Question No. 2.
15
                Do you have a general understanding
          Q.
     as to the amount by which -- withdrawn.
16
                Did -- did the assets of --
17
     withdrawn.
18
                Did the liabilities of HCMFA exceed
19
20
     its assets in 2020?
                MS. DANDENEAU: Objection to form.
21
22
                MS. DEITSCH-PEREZ: Objection, form.
                I believe I have already answered
23
          Α.
24
     that question earlier, I think. I believe I
25
     said yes.
```

```
Page 196
                  WATERHOUSE - 10-19-21
 1
                Okay. And did the liabilities of
          Q.
     NexPoint exceed its assets in 2020?
 3
                MS. DEITSCH-PEREZ: Objection to
 4
 5
          form.
                I don't believe so.
 6
          Α.
 7
                Okay. So -- so it was only one of
          Q.
     the two advisors who had liabilities that
 8
     exceeded the value of the assets.
 9
10
                Do I have that right?
                MS. DEITSCH-PEREZ: Objection to
11
          form.
12
13
                MS. DANDENEAU:
                                 Form.
14
          Α.
                Yes.
15
                And do you know, ballpark, the
          Q.
     amount by which the value of HCMFA's
16
     liabilities exceeded their assets in 2020?
17
                MS. DANDENEAU: Objection to form.
18
                I don't -- I don't recall.
19
          Α.
20
                MR. MORRIS: I had specifically
          requested in discovery the audited
21
22
          financial reports for both advisors and
          NexPoint. I think I may have gotten one
23
24
          for NexPoint but I'm still waiting for the
25
          balance. And I'm going to renew my request
```

```
Page 197
                  WATERHOUSE - 10-19-21
 1
          for those documents too.
                Let's go to the next exhibit, which
 3
          Ο.
     is Number 10. So I think it is in your stack,
 4
 5
     Mr. Waterhouse.
 6
                MR. MORRIS: And we can take the one
 7
          down from the screen and put up Number 10
          for everybody.
 8
                (Exhibit 10 marked.)
 9
                And I don't know if you have ever
10
          Ο.
     seen this before, but I'm really putting it up
11
     on the screen for purposes of turning to the
12
     very last page of the document.
13
14
                So this is a document that we have
15
     been -- that we premarked as Exhibit 10. And
     we're turning to the last page of the document,
16
     which is a document that was filed in the
17
     adversary proceeding 21-3004. And -- no, I
18
     apologize, I think we -- right there. Perfect.
19
20
                And it is page 31 of 31.
                MR. MORRIS: I think there may have
21
          been some something erroneously stapled to
22
          the hard copy that I gave you folks, but
23
          I'm looking for page 31 of 31 in the
24
25
          document that begins with the first page of
```

Page 198 WATERHOUSE - 10-19-21 1 Exhibit 10. 2. Do you have that, Mr. Waterhouse? 3 Ο. I don't have it yet. I'm looking. 4 Α. All right. If you look at the top 5 Ο. 6 right-hand corner, you will see it says page 7 hopefully something of 31? Α. Yes, I've got it now. 8 9 Okay. You have got 31 of 31. You Q. can take a moment to read that, if you would 10 like. 11 12 (Reviewing document.) Okay. Α. 13 Ο. Have you ever seen this before? 14 Α. I don't know if I have seen this 15 specific document, but, you know, I've --I'm -- I'm aware of it. 16 And is this the document that you 17 18 had in mind when you sent that email to 19 Ms. Thedford that we just looked at where you 20 said that Highland had agreed not to make a demand upon HCMFA until May 2021? 21 22 Honestly, I don't -- it wasn't this Α. I mean, it's something like this, 23 document. 24 yes. I mean, yes. 25 Well --Q.

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1 WATERHOUSE - 10-19-21

- A. It is something like this, but I
- 3 don't think it was this specific document.
- 4 Q. Well, but this document does say in
- 5 the last sentence that Highland agreed not to
- 6 seek -- not to demand payment from HCMFA prior
- 7 to May 31, 2021; right?
- 8 A. Yes.
- 9 Q. And are you aware of any other
- 10 document that was ever created pursuant to
- 11 which Highland agreed not to demand payment on
- amounts owed by HCMFA before May 31, 2021?
- 13 A. Hold on. Are you asking, am I aware
- of a document that by HCMFA that basically says
- 15 otherwise?
- 16 Q. No. Let me try again.
- 17 Are you aware of any other document
- 18 pursuant to which -- pursuant to which Highland
- 19 agreed not to make a demand on HCMFA until May
- 20 31st, 2021?
- 21 A. I'm -- I think there was something
- 22 in connection with -- with the -- with the
- 23 audit that basically says the same thing.
- Q. Okay. And do you think that the
- 25 audit is referring to this particular document?

Page 200 WATERHOUSE - 10-19-21 1 2. Α. I don't know. All right. This document is dated 3 Ο. April 15, 2019. Do you see that? 4 5 Α. I do. 6 Ο. And do you remember that the audit 7 was completed on June 3rd, 2019? Α. Yes. 8 9 And do you recall that the audited Q. financials -- and I'm happy to pull them up if 10 you would like, but do you recall that the 11 audited financials included a reference to the 12 13 agreement pursuant to which Highland agreed not to make a demand until May 31st, 2021? 14 15 Α. Yes, I remember. 16 Ο. And as part of the process, would you have expected the corporate accounting team 17 to have provided a copy of this document to 18 19 PwC? 20 MS. DANDENEAU: Objection to form. Yes, I would have expected something 21 Α. 22 like this, or again, you know, some document that basically states -- states the deferral 23 24 till May 31 of 2020. 25 Okay. Q.

Page 201 WATERHOUSE - 10-19-21 1 May 31 of 2021, excuse me. 2. Α. And this document states the 3 Ο. deferral that you just described; correct? 4 5 It does. Α. And this document states the 6 Ο. 7 deferral that was described in the audited financial statements that we looked at before; 8 9 correct? 10 Α. It does. MR. MORRIS: Okay. Can we scroll 11 down just a little bit to see who signed on 12 13 behalf of the acknowledgment there. 14 Q. Okay. So Mr. Dondero signed this 15 document on behalf of both HCMFA and Highland; do you see that? 16 I do. 17 Α. Okay. Did you discuss this document 18 Q. or the -- withdrawn. 19 20 Did you discuss the concept of the deferral with Mr. Dondero in the spring of 21 2.2 2019? I think I testified I don't recall. 23 Α. 24 Okay. Do you know whose idea it was Ο. to issue the acknowledgment in this form? 25

Page 202 WATERHOUSE - 10-19-21 1 I don't recall. Α. MR. MORRIS: Can we scroll back up 3 to the document, please. 4 Do you see in the beginning it says, 5 Ο. 6 reference is made to certain outstanding 7 amounts loaned from Highland to HCMFA for funding ongoing operations. 8 9 Do you see that? 10 Α. Yes. And were you aware as the CFO of 11 Ο. Highland and as the treasurer of HCMFA that as 12 13 of April 15, 2019, Highland had made certain 14 loans to HCMFA to fund HCMFA's ongoing 15 operations? 16 Α. Yes. And were you aware that those loans 17 were payable on demand and remained outstanding 18 as of December 31st, 2018? 19 20 Α. Yes. And were you aware that those 21 Ο. amounts were payable on demand, and they 22 remained outstanding as of April 15, 2019? 23 24 MS. DEITSCH-PEREZ: Object to the 25 form.

Case 3:21-cv-00881-X Docume Dxhiba-A0 Paled 2520612446 Page 88 of 282 PageID 47011 Page 203 WATERHOUSE - 10-19-21 1 Well, this -- this document dated Α. April 15, 2019 says they have been deferred to 3 May 31, 2021. 4 Right. But I'm just sticking to the 5 Ο. 6 first paragraph where they refer to the 7 outstanding amounts. And in the end it says the -- it remained outstanding on December 8 31st, 2018, and I think you told me that you 9 understood that, and then I'm just trying to 10 capture the last piece of it. 11 Did you understand that there were 12 13 amounts outstanding from the loan that Highland 14 made to HCMFA to fund ongoing operations as of 15 April 15th, 2019? 16 Α. Yes. Thank you. Let's look at the next 17 Ο. 18 sentence. HCMFA expects that it may be unable to repay such amounts should they become due 19 20 for the period commencing today and continuing through May 31st, 2021. 21 22 Do you see that? 23 MS. DANDENEAU: Objection to form. 24 Α. I do.

As the CFO -- withdrawn.

25

Q.

Page 204 WATERHOUSE - 10-19-21 1 As the treasurer of HCMFA, did you 2. believe that -- do you believe that statement 3 was true and accurate at the time it was 4 5 rendered? 6 Α. I mean, it -- it -- the answer to 7 that is I really didn't have any -- I didn't have an opinion really. 8 9 Did you do anything to educate Q. yourself in April of 2019 on the issue of 10 whether HCMFA could repay the amounts that it 11 owed to Highland should they become due? 12 13 Α. I don't believe so. 14 Q. Did you at any time form any 15 opinions as to HCMFA's ability to repay all amounts due to Highland should they become due? 16 Not really. I quess I don't... 17 Α. Well, you told the retail board that 18 Q. HCMFA's liabilities exceeded their assets in 19 20 2020; correct? 21 Α. Yes. Based on the work that you did to 22 Ο. prepare for the retail board, did you form any 23 24 view as to whether HCMFA would be unable to 25 repay the amounts that it owed to Highland

Page 205 WATERHOUSE - 10-19-21 1 should they become due? MS. DANDENEAU: Objection to form. 3 Α. I mean, I -- when you look at that, 4 5 to answer you, completely, you know, again, 6 if -- the response I gave the retail board was, you know, the -- the advice -- HCMFA advisors 7 have the -- have the full faith and backing of 8 Jim Dondero. So I didn't form an opinion of 9 whether the advisor could pay it or not. 10 Did you form any view as to whether 11 the advisors could repay the amounts that it 12 owed to Highland should they become due without 13 the full faith and backing of Mr. Dondero? 14 15 MS. DANDENEAU: Objection to form. 16 MS. DEITSCH-PEREZ: Form. I mean, if you -- if you -- if you 17 Α. take that last statement out, I mean, it would 18 be difficult for HCMFA to pay back demand notes 19 20 at that time. And it was precisely for that reason 21 Ο. that you told the retail board that -- that the 22 retail -- that the advisors had the full faith 23 24 and backing of Mr. Dondero; correct? 25 MS. DANDENEAU: Objection to form.

Page 206 WATERHOUSE - 10-19-21 1 I mean, yes, as the mouthpiece, I Α. was relaying information. 3 Okay. And you relayed that 4 information with the knowledge and approval of 5 6 Mr. Dondero; correct? 7 MS. DEITSCH-PEREZ: Object to the form. 8 As I stated in the email, I don't 9 Α. believe, and I think I testified I don't 10 believe I had conversations with Mr. Dondero at 11 the time of that board meeting. 12 13 Ο. Did you tell the retail board that the advisors had the full faith and backing of 14 15 Mr. Dondero without Mr. Dondero's prior 16 approval? Yeah, I -- I -- yes, I'm -- like I 17 said, I think I testified earlier, I'm sure I 18 qualified it as well. 19 20 Q. What do you mean by that? MS. DANDENEAU: Objection to form. 21 22 Again -- again, like I said in the Α. email, it has the full faith and backing of Jim 23 24 Dondero unless that has changed. 25 Actually that is not what you said, Q.

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- 1 WATERHOUSE 10-19-21
- 2 so let's put the email back up.
- 3 A. It is -- it is -- it is in the
- 4 email.
- 5 Q. Let's put the email back up. You
- 6 didn't say unless it has changed. You said you
- 7 believe it hasn't changed; right?
- 8 A. Okay. And to my knowledge that
- 9 hasn't changed, that is what it says.
- 10 Q. That's right.
- 11 A. But, again, I mean, that is -- I
- 12 don't know everything. And I'm not in every
- 13 conversation. I'm not -- to presume that I am,
- is -- and you have to put myself -- as you
- 15 started this out, Mr. Morris, I was at home in
- 16 October of 2020 with COVID -- or, you know,
- 17 under these COVID times that we described is
- 18 very difficult.
- 19 We have all been working at home for
- 20 really the first time ever, undergoing
- 21 processes, procedures, control environments
- that have been untested, and there is poor
- 23 communication.
- So I am relaying, as I'm telling you
- 25 now, what is in the email. And unless

Page 208 WATERHOUSE - 10-19-21 1 something has changed -- to my knowledge, it hasn't changed, but it could have changed. 3 When you say that the advisors have 4 5 the full faith and backing from Mr. Dondero, 6 did you intend to convey that, to the extent the advisors were unable to satisfy their 7 obligations as they become due, Mr. Dondero 8 would do it for them? 9 10 MS. DANDENEAU: Object to the form. MS. DEITSCH-PEREZ: Object to the 11 form. 12 And, John, we have given you a lot 13 14 of leeway here but this does not seem 15 relevant to this case. You seem sort of taking a complete sort of diversion into 16 the allegations and the complaint just 17 filed on Friday, and so I would ask you to 18 19 move on because --20 MR. MORRIS: And I will tell you --I will tell you that I have never read that 21 22 complaint cover-to-cover. I have nothing to do with the prosecution of those claims. 23 24 And this issue that we're talking about right now is related solely to the 25

```
Page 209
                   WATERHOUSE - 10-19-21
 1
          promissory notes that your clients refuse
 3
          to pay.
                 So I'm going to continue to ask my
 4
          questions, and I would ask the court
 5
 6
          reporter to read back my last question.
 7
                             (Record read.)
                MS. DEITSCH-PEREZ: And then I
 8
 9
          believe there were objections to form.
10
                 You can answer the question.
          Q.
          Α.
11
                 Yes.
                 Thank you very much, sir.
12
          Q.
13
                MR. MORRIS: Can we go back to the
14
          other document, please?
15
                Mr. Waterhouse, do you know if this
          Ο.
     document was ever shared with the retail board?
16
                 I don't recall.
17
          Α.
                Did you ever share it with the
18
          Q.
     retail board?
19
20
          Α.
                 I don't recall.
                Did you ever tell the retail board
21
          Ο.
     about the substance of this document?
22
                 I don't recall.
23
          Α.
                Did you ever tell the retail board
24
          Ο.
25
     that Highland had agreed not to make a demand
```

Page 210 WATERHOUSE - 10-19-21 1 against HCMFA until May 2021? Α. I don't recall. 3 Do you know whether anybody on 4 Ο. behalf of the advisors ever informed the retail 5 6 board that Highland had agreed on April 15, 7 2019, not to make a demand against HCMFA under the promissory notes? 8 9 Α. I don't recall. Did you instruct Ms. Thedford or 10 Ο. anybody else responding to the retail board's 11 15(c) inquiry to disclose this document? 12 13 Α. Did I instruct Ms. Thedford or 14 anyone else to -- to -- to produce this, to disclose this document? Is that what you -- I 15 just want to make sure. 16 17 Uh-huh. Ο. Yeah, I don't -- I don't recall. 18 Α. 19 Did you instruct anybody to inform Ο. 20 the retail board, in response to their question as part of the 15(c) process, to -- to tell the 21 retail board about Highland's agreement not to 22 make a demand until 2021? 23 24 MS. DANDENEAU: Objection to form. 25 I don't recall. Α.

Page 211 WATERHOUSE - 10-19-21 1 Did you ever inform PwC that HCMFA's Ο. liabilities exceeded its assets? 3 MS. DANDENEAU: Object to the form. 4 I don't -- I don't think I told 5 Α. 6 I mean, they -- they audited the 7 financial statements. Did -- do you know if anybody on 8 Ο. behalf of Highland ever informed 9 PricewaterhouseCoopers that HCMFA may be unable 10 to repay amounts owing to Highland, should they 11 become due? 12 13 MS. DANDENEAU: Objection to form. Again, I think I testified 14 Α. 15 earlier that -- that this was communicated to the auditors. 16 Ideally --17 Ο. I don't know who exactly did that. 18 Α. I don't recall doing it, but, yeah, it was --19 20 it was communicated. And that is why -- I mean, there is a disclosure in the financial 21 22 statements; right? There is, and that disclosure 23 Ο. 24 relates to the last sentence of this document; 25 correct?

Page 212 WATERHOUSE - 10-19-21 1 Α. Yes. Do you recall looking in the 3 Ο. document and seeing anything that was disclosed 4 5 with respect to the sentence above that? 6 Α. No. 7 Do you know whether anybody on Ο. behalf of Highland ever informed 8 PricewaterhouseCoopers that HCMFA expects that 9 it may be unable to repay amounts due and owing 10 to Highland should they become due? 11 MS. DEITSCH-PEREZ: Object to the 12 13 I think that is the third time. 14 Α. I don't recall. Again, as I said, 15 we -- all of this was given to the auditors. Do you know if Highland received 16 Ο. anything of value in exchange for its agreement 17 18 not to demand payment on amounts owed by HCMFA prior to May 31st, 2021? 19 20 MS. DEITSCH-PEREZ: Object to the That is the second time. 21 form. 22 MS. DANDENEAU: Object to the form. I have answered this question. 23 Α. 24 MR. RUKAVINA: Hold on. Object to 25 legal conclusion. Go ahead.

Page 213 WATERHOUSE - 10-19-21 1 Α. I have answered this question 3 before. And the answer was no? 4 Ο. 5 Α. I'm not aware. 6 Ο. Now, this acknowledgment can't 7 possibly apply to the two notes that you signed on behalf of HCMFA because those notes were 8 signed on May 2nd and May 3rd, 2019; is that 9 right? 10 MS. DANDENEAU: Objection to form. 11 Α. Unless there is a drafting error. 12 13 Q. Okay. Are you aware of a drafting 14 error? I'm not aware. I didn't -- I wasn't 15 Α. part of -- I didn't sign this note or this 16 acknowledgment. I didn't draft it. 17 18 Ο. But you do see it is dated April 15, 2019; right? 19 20 Α. Yes. And this was a document that was 21 Ο. actually included by the advisors in a pleading 22 they filed with the Court; right? 23 24 MR. RUKAVINA: Well, I don't know 25 that so I object to form.

```
Page 214
                  WATERHOUSE - 10-19-21
 1
          Q.
                Okay.
                      Let's go to the first page of
     the document and just confirm that.
 3
                MR. AIGEN: Mr. Morris, I just note
 4
 5
          that you already said there was some error
 6
          with the document that is listed as
 7
          exhibit --
 8
                MR. MORRIS: No. No, no, no.
 9
                MS. DEITSCH-PEREZ: Oh, okay.
                MR. MORRIS: What I said is that
10
          there is a few pages that were mistakenly
11
12
          stapled to the end of the document.
13
                MS. DEITSCH-PEREZ: Okay.
14
                MR. MORRIS: There is no problem
15
          with this document.
16
                MS. DEITSCH-PEREZ: And just so
          we're clear that the document -- the pages
17
          that start with defendant's amended answer
18
19
          are not intended to be part of this
20
          document?
                              That's correct.
21
                MR. MORRIS:
22
                MS. DEITSCH-PEREZ: And that the --
          but it is your representation that the rest
23
24
          of the document is -- is -- is correct
25
          because we don't -- we don't have any way
```

```
Page 215
                  WATERHOUSE - 10-19-21
 1
          of verifying that, we're just --
                MR. MORRIS: You do, actually.
 3
          could just go to Docket No. 21-3004.
 4
 5
                MS. DEITSCH-PEREZ: If you want to
 6
          stop this deposition so we can go and pull
 7
          that document up, we're happy to do it. So
          I am just asking you for your
 8
 9
          representation.
10
                             Sure. I gave that.
                MR. MORRIS:
11
                MS. DEITSCH-PEREZ:
                                     Okay.
12
          Q.
                So do you see that this is a
13
     document that was actually filed with the Court
14
     by Highland Capital Management Fund Advisors?
15
          Α.
                No. I get with the first page in
     the section. Maybe I'm looking at the wrong
16
             It says, Highland Capital Management.
17
                Don't worry about it. Don't worry
18
          Ο.
19
     about it.
20
          Α.
                Maybe I went back -- okay.
21
                MR. MORRIS: All right. Can we put
          up on the screen Exhibit 2.
22
23
                (Exhibit 2 marked.)
24
                MR. MORRIS: I think it is
25
          Exhibit 1.
```

```
Page 216
                  WATERHOUSE - 10-19-21
 1
                MS. DANDENEAU: I'm sorry, John, did
          you say Exhibit 2 or Exhibit 1?
 3
                MR. MORRIS: It is Exhibit 2 in the
 4
 5
          binders so it is premarked Exhibit 2. And
 6
          now I'm asking -- right there -- going to
 7
          Exhibit 1 to the document that was marked
          as Exhibit 2.
 8
 9
                MS. DANDENEAU: Got it. In the
10
          binder there is no --
                MS. DEITSCH-PEREZ: There is no
11
          Exhibit 1.
12
                MR. MORRIS: All right. So look at
13
          the one on the screen.
14
15
                Do you see, Mr. Waterhouse, that
          Q.
     this is a promissory note dated May 31st, 2017,
16
     in the approximate amount of $30.7 million?
17
18
          Α.
                Yes.
                And do you see that the maker of the
19
          Ο.
20
     note is NexPoint?
21
          Α.
                Yes.
22
                And that Highland is the payee; is
          Q.
     that right?
23
24
          Α.
                Yes.
25
                Okay. And do you see in Paragraph 2
          Q.
```

Page 217 WATERHOUSE - 10-19-21 1 this is an annual installment note? 2. 3 Α. Can you scroll down. 0. 4 Sure. 5 MR. MORRIS: Can we scroll down --6 yeah, there you go. 7 Right there, yeah. Α. Yes. MR. MORRIS: And can we scroll down 8 to the signature line. 9 And do you recognize that as 10 Mr. Dondero's signature? 11 Α. 12 Yes. 13 Ο. And is this the promissory note that 14 we talked about earlier where NexPoint had made 15 certain payments in the aggregate amount of about 6 to \$7 million against principal and 16 interest? 17 I don't recall discussing the 18 Α. aggregate principal amounts of 6 to \$7 million, 19 20 but -- so I don't -- I don't recall that prior discussion with those amounts. 21 22 All right. Let's take a look. Ο. NexPoint always included this promissory note 23 as a liability on its audited financial 24 statements; right? 25

```
Page 218
                   WATERHOUSE - 10-19-21
 1
          Α.
                 Yes.
                And NexPoint had its financial
 3
          Ο.
     statements audited; isn't that correct?
 4
 5
          Α.
                 Yes.
 6
          Ο.
                And was the process of NexPoint's
 7
     audit similar to the process you described
     earlier for Highland and HCMFA?
 8
                 Yes, it is similar.
 9
          Α.
10
          Q.
                 Okay.
                 MR. MORRIS: Can we put up
11
12
          NexPoint's audited financials and let
13
          everybody know what exhibit number it is,
14
          La Asia?
                MS. CANTY: It is going to be
15
16
          Exhibit 46.
                 (Exhibit 46 marked.)
17
                And do you see, sir, that we've put
18
          Ο.
     up NexPoint Advisors' consolidated financial
19
20
     statements and supplemental information for the
     period ending December 31st, 2019?
21
22
          Α.
                 Yes.
                Did you participate in the process
23
24
     whereby these audited financial statements were
     issued?
25
```

Page 219 WATERHOUSE - 10-19-21 1 2. Α. I didn't participate directly, as I've described before, about the -- the team 3 performing the audit. 4 Do you recall when the audit of 5 Ο. 6 NexPoint's financial statements for the period 7 ending December 31st, 2019 was completed? Α. 8 Yes. And when do you recall it being 9 Q. completed? 10 In January of 2021. 11 Α. Do you know why the 2019 audit 12 Q. 13 report wasn't completed until January of 2021? 14 Α. Yes. 15 0. Why was the NexPoint audit report for the period ending 12/31/19 not completed 16 until January 2021? 17 Because we had to deal with working 18 Α. from home from -- with COVID, and on top of all 19 20 of our daily responsibilities and job duties at -- at providing -- at Highland providing 21 22 services to NexPoint, we had to do all of this extra work for a bankruptcy that was filed in 23 24 October of 2019. 25 MR. MORRIS: Can we go to the

```
Page 220
                  WATERHOUSE - 10-19-21
 1
          balance sheet on page 3? Okay. Stop right
          there.
 3
                Do you see under the liabilities
 4
 5
     section, the last item is note payable to
     affiliate?
 6
 7
          Α.
                Yes.
                And is that the note that we just
 8
          Ο.
     looked at?
 9
10
                MS. DANDENEAU: Objection to form.
                Withdrawn.
11
          Q.
                Is that the approximately
12
13
     $30 million note that we just looked at that
     was dated from 2017?
14
15
                MS. DANDENEAU: Objection to form.
          Α.
                I believe no.
16
                Okay. You're not aware of any other
17
          Ο.
     note that was outstanding from NexPoint to
18
     Highland as of the end of the year 2019, other
19
20
     than that one $30 million note; right?
                I don't recall.
21
          Α.
22
                And as of the end of 2019, the
          0.
     principal amount that was due on the note was
23
24
     approximately $23 million; right?
25
                MS. DEITSCH-PEREZ: Object to the
```

```
Page 221
                   WATERHOUSE - 10-19-21
 1
          form.
                Approximately.
 3
          Α.
                 And does that refresh your
 4
          Ο.
     recollection that between the time the note was
 5
     executed and the end of 2019, that NexPoint had
 6
 7
     paid down approximately $7 million?
          Α.
                 Yes.
                       If we are just doing the math,
 8
 9
     yes.
                Okav.
                       Did NexPoint complete its
10
          Ο.
     audit from 2020?
11
                 Sorry, you kind of broke up.
12
          Α.
                                                 Do
13
     NexPoint complete?
                 The audit of its financial
14
          Q.
15
     statements for the period ending December 31st,
16
     2020?
17
          Α.
                No.
                No, it's not complete?
18
          Q.
19
                 No, it is not complete.
          Α.
20
                Did HCMFA complete its audit for the
          Q.
     year ending December 31st, 2020?
21
22
          Α.
                 No.
23
                 MR. MORRIS: Can we go to page 15,
24
          please, the paragraph at the bottom.
25
                 Do you see that NexPoint has
          Q.
```

Page 222

```
WATERHOUSE - 10-19-21
 1
 2.
     included under notes payable to Highland a
     reference to the amounts that were outstanding
 3
     as of the year-end 2019 under the note that we
 4
 5
     looked at just a moment ago?
 6
          Α.
                Yes. Are you talking about the
 7
     second paragraph?
                I'm actually talking about first
 8
          Ο.
     paragraph. Do you understand that the first
 9
     paragraph is a reference to the 2017 note, and
10
     the amounts that were -- the principal amount
11
     that was outstanding as of the end of 2019?
12
13
                MS. DANDENEAU: Objection to form.
14
          John, do you mean the first paragraph of
15
          that page?
16
                MR. MORRIS: No, the first paragraph
          under notes payable to Highland.
17
18
          Α.
                Yeah, I see the paragraph, and
19
     again, this is what I answered earlier.
20
     believe so, just because I don't -- again, this
     is a number in a balance sheet, and without
21
22
     matching it up and seeing the detail with the
     schedule like I kind of talked about for
23
24
     Highland's financial statements, it is a little
     bit more difficult to tie everything in
25
```

Page 223 WATERHOUSE - 10-19-21 1 2. perfectly together. Okay. But you're not aware of any 3 Ο. note that was outstanding at the end of 2019 4 from NexPoint to Highland other than whatever 5 principal was still due and owing under the 6 \$30 million note issued in 2017; correct? 7 Well, it -- I don't -- there is 8 Α. reference in the second paragraph. I don't --9 I don't -- I don't recall what that is 10 referring to, so I don't -- I don't know. 11 Well, if you listen carefully to my 12 Q. question, right, I'm asking about notes that 13 14 were outstanding at the end of 2019, and if we 15 look at the paragraph you just referred to, it says that during the year there were new notes 16 issued totaling \$1.5 million, but by the end of 17 the year, no principal or interest was 18 19 outstanding on the notes. 20 Do you see that? 21 Α. Oh, I do, yes. 22 So does that refresh your Ο. recollection that there were no notes 23 24 outstanding from NexPoint to Highland other than the principal remaining under the original 25

Page 224 WATERHOUSE - 10-19-21 1 \$30 million 2017 note that we looked at a moment ago? 3 Well, we're at the bottom of the 4 Α. 5 page. Is there anything on page 16? 6 Ο. That is a fair question, sure. That 7 is it. Okay. So it appears that that is 8 the only note that is detailed in the notes in 9 the financial statement. 10 And you don't have any memory of any 11 other note other than the 2017 note, right, 12 13 being outstanding as of the end of the year? I deal with thousands of 14 Α. 15 transactions every year. I don't really have a 16 very specific memory for what exactly was outstanding. 17 MR. MORRIS: Why don't we take a 18 19 break now. We've been going for a little 20 while. It's 3:26. Let's come back at 21 3:40. 22 VIDEOGRAPHER: We're going off the 23 record at 3:26 p.m. 24 (Recess taken 3:26 p.m. to 3:39 p.m.) 25 VIDEOGRAPHER: We are going back on

Page 225 WATERHOUSE - 10-19-21 1 the record at 3:39 p.m. All right. Mr. Waterhouse, we -- I 3 Ο. don't think we have a lot more here. 4 To the best of your knowledge and 5 recollection, were all affiliate loans and all 6 7 loans made to Mr. Dondero recorded on Highland's books and records as assets of 8 9 Highland? 10 MS. DANDENEAU: Object to the form, asked and answered. 11 To my knowledge, yes. 12 Α. 13 Q. Okay. Can you recall any loan to 14 any affiliate or Mr. Dondero that was not 15 recorded on Highland's books and records as an 16 asset? Like during my time as CFO? I don't 17 Α. recall. 18 19 How about after the time that you Ο. 20 were CFO? Did you recall that there was a loan by Highland to an affiliate or to Mr. Dondero 21 22 that hadn't been previously recorded on Highland's books as an asset? 23 24 MS. DANDENEAU: Objection to form. 25 Α. I guess I don't understand the

Page 226 WATERHOUSE - 10-19-21 1 I left Highland as of -- I'm not 2. question. aware of -- I left Highland in February --3 probably the last day of February of 2021. 4 5 Ο. Okay. 6 Α. I'm not -- I'm not aware of any --7 I'm not aware of anything past that date. Okay. While you were the CFO at 8 Ο. Highland, did Highland prepare in the ordinary 9 course of business a document that reported 10 operating results on a monthly basis? 11 12 Α. Yes. 13 And are you generally familiar with 14 the monthly operating reports? 15 Α. Yeah. You are referring to the 16 reports that we filed to the Court every month? I apologize, I'm not. I'm taking 17 Ο. you back to the pre-petition period. 18 There was 19 a report that I have seen that I'm going to show you, but I'm just asking for your 20 knowledge. 21 22 MR. MORRIS: Let's put it up on the 23 screen, Exhibit 39. 24 (Exhibit 39 marked.) 25 Do you see this is a document that Q.

Page 227 WATERHOUSE - 10-19-21 1 is called operating results? Α. Yeah, that's the title of it. 3 Okay. And was a report of operating 4 0. results prepared by Highland on a monthly basis 5 6 during the time that you served as CFO? 7 Α. No. Are you familiar with a document of 8 Ο. this type? And we can certainly look at the 9 next page or two to refresh your recollection. 10 I'm just looking at the title. 11 don't really -- again, as I discussed before, I 12 13 don't have any records or documents or emails or appointments or anything that I was able to 14 15 use prior to -- prior to this deposition, so I'm doing the best I can. 16 Okay. You don't need to apologize. 17 I'm just asking you if you are familiar with 18 the document called Operating Results that was 19 prepared on a monthly basis at Highland? 20 MS. DEITSCH-PEREZ: Object to the 21 22 form. If you're not, you're not. 23 Q. 24 I don't believe this was prepared on Α.

a monthly basis.

25

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Page 228
                   WATERHOUSE - 10-19-21
 1
          Q.
                Okay. Do you see that this one
     is -- is dated February 2018?
 3
          Α.
                Yes.
 4
                Do you have -- do you believe --
 5
          Ο.
 6
     have you ever seen a document that was
 7
     purporting to report operating results for
     Highland?
 8
                MS. DANDENEAU: Objection to form.
 9
10
          Α.
                Yes.
                Okay. And when you say that you
11
          Q.
     don't believe it was produced on a monthly
12
13
     basis, was it produced on any periodic bases to
14
     the best of your recollection?
15
          Α.
                I believe it was -- it was prepared
     on an annual basis.
16
17
          Q.
                Okay.
                MR. MORRIS: Can we look at the next
18
19
          page.
20
                Do you see that there is a statement
     here called: Significant items impacting
21
     HCMLP's balance sheet?
22
23
                And it is dated February 2018.
24
          Α.
                Yes.
25
                Do you recall that there was a
          Q.
```

- 1 WATERHOUSE 10-19-21
- 2 report that Highland prepared that identified
- 3 significant items impacting the balance sheet?
- 4 A. A report that was prepared.
- 5 Q. Let me ask a better question: Did
- 6 Highland prepare reports to the best of your
- 7 recollection that identified significant items
- 8 that impacted its balance sheet?
- 9 A. Well, so Highland prepared a -- a
- 10 monthly close package. And maybe I'm
- 11 getting -- and -- and maybe change names at one
- 12 time or maybe I'm just -- again, just
- 13 misremembering -- but in that, yes, there is a
- 14 page that would detail just changes in -- you
- 15 know, just changes month over month on the
- 16 balance sheet.
- Q. Okay. And maybe it is my fault.
- 18 Maybe I didn't know the proper name for it.
- 19 But let's use the phrase "monthly close
- 20 package."
- Did Highland prepare a monthly close
- 22 package in the ordinary course of business
- 23 during the time that you served as CFO?
- MS. DANDENEAU: Objection to form.
- 25 A. Yes.

Page 230 WATERHOUSE - 10-19-21 1 And did the monthly close package Ο. that Highland prepared include information 3 concerning significant items that impacted 4 Highland's balance sheet? 5 Yes, it had a page like that is --6 Α. 7 that is on the screen that detailed items like -- of that nature. 8 And do you know who -- was there 9 Q. anybody at Highland who was responsible for 10 overseeing the preparation of the monthly 11 reporting package? 12 13 Α. That would have been -- again, it varies over time during my tenure as CFO. 14 15 It -- it varied over -- over time, but -- but 16 typically a -- a corporate accounting manager. And who were the corporate 17 Ο. accounting managers during your tenure as CFO? 18 It would have been Dave Klos and 19 Α. 20 Kristin Hendrix. And did the corporate accounting 21 Ο. 22 manager deliver to you drafts of the monthly close package before it was finalized? 23 24 Sometimes. Α. 25 Was that the practice even if there Q.

Page 231 WATERHOUSE - 10-19-21 1 were exceptions to the practice? The practice meaning that they 3 Α. sometimes lured them to me? 4 5 That that was the expectation even Ο. 6 if circumstances prevented that from happening 7 from time to time. MS. DEITSCH-PEREZ: Object to the 8 form. 9 I -- I would say it started out that 10 way but over the years it -- it was not 11 enforced. 12 13 Okay. So you were -- you reviewed 14 and approved monthly -- monthly reporting 15 packages for a certain period of time and then 16 over time you stopped doing that. 17 Do I have that right? MS. DANDENEAU: Objection to form. 18 Yes, I mean, if you're talking about 19 Α. 20 a formal meeting where we sit down and go through and approve it. I would say that was 21 standard practice a decade -- you know, early 22 And as time went on that -- that -- that 23 24 practice wasn't followed. 25 Okay. Q.

- 1 WATERHOUSE 10-19-21
- A. And, quite frankly, I don't even
- 3 know if these were -- these were sent to me
- 4 even in any capacity.
- 5 Q. What was the purpose of preparing
- 6 the monthly reporting package -- withdrawn.
- 7 What was the purpose of preparing
- 8 the monthly close package?
- 9 MS. DEITSCH-PEREZ: Object to the
- 10 form.
- 11 A. The -- the original purpose was so
- 12 that it would just -- it would be a report that
- 13 was reviewed monthly with senior management.
- Q. Who was included in the idea of
- 15 senior management?
- 16 A. You know, I think originally when
- 17 this was conceived that would have been like
- 18 Jim Dondero and Mark Okada.
- 19 Q. Were monthly reporting -- withdrawn.
- 20 Were monthly close packages prepared
- 21 to the best of your knowledge until the time
- 22 you left Highland?
- 23 A. To my knowledge -- I don't know,
- 24 actually. I mean, to my knowledge, I believe
- 25 it was being -- that was still being done. I

- 1 WATERHOUSE 10-19-21
- 2 don't know because, again, I wasn't reviewing
- 3 them. I hadn't reviewed a close package for --
- 4 for a long time. But I believe the standard
- 5 practice that was still being carried out.
- Q. Did you ever have any discussions
- 7 with the debtor's independent board concerning
- 8 any promissory notes that were issued by any of
- 9 the affiliates or Mr. Dondero?
- 10 A. I can't -- I can't -- I can't recall
- 11 specifically.
- 12 Q. Did you speak with the independent
- 13 board from time to time?
- 14 A. Yes, from -- from -- from time to
- time I had discussions with the independent
- 16 board members, you know, either -- either, you
- 17 know, by themselves or wholly, you know, as --
- 18 as a -- as a combined work.
- 19 Q. Okay. Before we talk about
- 20 Mr. Seery, do you recall ever having a
- 21 conversation with Mr. Nelms or Mr. Dubel
- 22 concerning any promissory note that was
- 23 rendered by one of the affiliates or
- 24 Mr. Dondero to Highland?
- 25 A. I don't recall any conversations

Page 234 WATERHOUSE - 10-19-21 1 specifically. 2. Do you know if the topic was ever 3 discussed, even if you don't remember it 4 specifically? 5 MS. DANDENEAU: Objection to form. 6 7 Α. It -- it -- it may have. I don't know. I don't recall. 8 9 Do you recall ever discussing any Q. promissory note issued by any of the affiliates 10 or Mr. Dondero with James Seery? 11 Α. I don't -- I don't recall 12 13 specifically. 14 Q. Do you recall generally ever 15 discussing the topic of promissory notes issued by any of the affiliates or Mr. Dondero to 16 Highland with Mr. Seery? 17 Nothing -- nothing is really jumping 18 Α. 19 out at me. 20 Do you recall if you ever told Mr. Seery that any of the affiliates or 21 22 Mr. Dondero didn't have an obligation to pay all amounts due and owing under their notes? 23 24 Α. I don't recall having that conversation. 25

Case 231e 02310 03 02006 - 130 pic 815 of the file of 1 07216 / 12 10 / 22 / 12 10 Case 3:21-cv-00881-X Docume Exhibitato Piteme (28/49/2446 Page 120 of 282 PageID 47043 Page 235 WATERHOUSE - 10-19-21 1 Ο. Did you ever tell Mr. Seery that you had any reason to believe that the amounts 3 reflected in the notes issued by the affiliates 4 and Mr. Dondero were invalid for any reason? 5 I don't -- I don't recall. 6 Α. Did you tell Mr. Dondero -- did you 7 Q. tell Mr. Seery that you thought the promissory 8 notes issued by the advisors and Mr. Dondero 9 that were outstanding as of the petition date 10 were assets of the estate? 11 I don't recall having a specific 12 Α. conversation about those -- you know, those 13 14 notes outstanding as -- as of the petition date 15 being assets on the estate. I mean, we put together -- you know, they're in the books and 16 records of the financial statements. 17 recall having a specific conversation. 18 19 Did you ever prepare any documents Ο. 20 that were delivered to Mr. Seery that concerned the promissory notes issued by any of the 21 affiliates or Mr. Dondero? 22

- A. Did I produce any that concerned --
- 25 you mean did I just -- did I give Mr. Seery

23

MS. DANDENEAU: Objection to form.

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Page 236
                  WATERHOUSE - 10-19-21
 1
     anything that -- that said I have concerns over
     these notes?
 3
                No. Let me try again. Maybe it was
 4
          Ο.
 5
     my question.
 6
                Did you ever give Mr. Seery any
 7
     information concerning any of the notes that
     were issued by any of the affiliates or
 8
 9
     Mr. Dondero?
10
                MS. DANDENEAU: Objection to form.
                I don't recall if I did or not.
11
     don't -- I don't remember. I mean, you have my
12
13
     emails. You may have asked. Again, I don't --
     I don't know.
14
15
                MR. MORRIS: Can we put up the
16
          document that has been premarked as Exhibit
17
          39?
                MS. DANDENEAU: John, that is this
18
19
          document, isn't it?
20
                MR. MORRIS: Oh, yeah, it might be,
          as a matter of fact. Let's go to Number
21
22
          40.
                (Exhibit 40 marked.)
23
24
                During the bankruptcy,
          Ο.
     Mr. Waterhouse, did you prepare documents that
25
```

Page 237 WATERHOUSE - 10-19-21 1 were filed with the bankruptcy court? Α. I didn't -- I didn't prepare them 3 personally. 4 5 Did people prepare them under your Ο. direction? 6 7 There were members of the team Α. Yes. that prepared them, and they worked in -- you 8 9 know, there were members of DSI that were involved in the process as well. 10 To the best of your knowledge, did 11 DSI rely on the employees of Highland for the 12 13 information that they used to prepare the 14 bankruptcy filings? 15 Α. Yes. The books and records were with the Highland personnel. 16 Okay. And do you see on the screen 17 Ο. here, there is a document that we have marked 18 19 as Exhibit 40 that is -- that is titled Summary 20 of Assets and Liabilities? Uh-huh. 21 Α. 22 Okay. And do you recall reviewing Ο. any summary of assets and liabilities before it 23 24 was filed with the bankruptcy court? 25 Yes, I recall reviewing this at a Α.

Page 238 WATERHOUSE - 10-19-21 1 high level. 2. And did you believe that it was 3 Ο. accurate at the time it was filed? 4 I didn't have any other reason to 5 believe otherwise. 6 7 Okay. Do you see that the total value of all properties listed in Part 1 is 8 9 approximately \$410 million? 10 MS. DEITSCH-PEREZ: Objection to form. 11 Yes, it is in 1c. 12 Α. 13 Q. Yes. Yes, I see that. 14 Α. 15 Okay. If we go to the second page, Q. now I think I may just have excerpts here, just 16 so everybody is clear, but if we scroll down to 17 the second page, you will see that there is 18 19 a -- a little further. There you go. You will see there is a reference to Item 71, notes 20 receivable. 21 22 Do you see that? Α. T do. 23 And that was a reference to the 24 Ο. notes receivable from the affiliates and 25

Page 239 WATERHOUSE - 10-19-21 1 Mr. Dondero, among others; is that right? 2. MS. DANDENEAU: Objection to form. 3 Α. The affiliate notes and the 4 5 Dondero notes were in this amount, but they 6 weren't -- again, like you said, and among 7 others. Okay. We will look at the 8 Ο. specificity because I'm not playing gaming 9 here, but do you know if the \$150 million of 10 notes receivable was included within the 11 \$410 million of total value of the debtor's 12 13 assets? MS. DANDENEAU: Objection to form. 14 15 Α. I -- I -- I believe so. 16 Ο. Right. And so is it fair to say that as of the date this document was prepared, 17 the notes receivable were more than one-third 18 of the value of the debtor's assets? 19 20 MS. DEITSCH-PEREZ: Object to the form. 21 22 MS. DANDENEAU: Object to the form. Again, if you are just taking the 23 Α. 24 math, 150 divided by whatever the \$400 million

number is above, then yes, you get there.

25

Page 240 WATERHOUSE - 10-19-21 1 Q. Okay. You know, but as of the time of this 3 Α. filing, that is what was put in this filing, 4 right, but, you know, I mean, numbers --5 6 numbers change, facts and circumstances change. 7 But as the CFO of Highland, the debtor in bankruptcy, did you believe that this 8 number accurately reflected the total amount 9 due under the notes receivable? 10 That is what we had in our books and 11 Α. records. 12 13 Ο. Okay. And did you believe as the 14 CFO that the books and records accurately 15 reported the then value of the debtor's assets? 16 MS. DANDENEAU: Objection to form. We didn't -- as part of this filing, 17 Α. there was no fair value measurement or 18 19 anything. These were just accounting entries 20 for the promissory notes. There is no analysis for impairment or fair market value adjustments 21 22 or anything of that nature. This is purely taking numbers and putting them in our form. 23 24 Did you do any impairment analysis Ο. at any time while you were employed by 25

Page 241 WATERHOUSE - 10-19-21 1 Highland? 2. Α. Yes, we did do impairment analysis 3 4 on -- on assets. Okay. Did you ever do an impairment 5 Ο. 6 analysis on any of the promissory notes that were given to Highland by any of the affiliates 7 or Mr. Dondero? 8 9 Α. Not that I recall. Under what circumstances do you 10 Ο. prepare impairment analyses? 11 As -- as -- if you're preparing 12 Α. financials in accordance with GAAP, generally 13 14 accepted accounting principles, if you're 15 preparing full GAAP financials, you should be preparing -- you should be undergoing on a 16 periodic basis any fair market value 17 adjustments to assets. 18 As I was instructed at the time of 19 20 the petition date, we weren't producing GAAP financials. So this wasn't something I was 21 worried about nor concerned about. 22 Okay. Were NexPoint and HCMFA and 23 Ο. 24 Highland's audited financial statements prepared in accordance with GAAP? 25

Page 242 WATERHOUSE - 10-19-21 1 The audited financials -- yes, Α. audited financial statements are prepared in 3 accordance with GAAP. 4 5 Do you recall whether any of 0. 6 Highland or HCMFA or NexPoint ever made a fair 7 market value adjustment to any of the notes issued by any of the affiliates or Mr. Dondero 8 to Highland? 9 I do not recall that happening, but 10 the -- it is because under -- under GAAP, 11 the -- the treatment of liabilities is 12 13 different than assets. 14 Q. Okay. So then let's just focus on 15 Highland's audited financial statements. The last audited financial 16 statements were for the period ending December 17 31st, 2018; correct? 18 19 That is my understanding. Α. 20 And you had -- you had an obligation Q. to disclose anything to PricewaterhouseCoopers 21 22 concerning any subsequent events between the end of 2018 and June 3rd, 2019; correct? 23 24 MS. DANDENEAU: Objection to form. 25 MS. DEITSCH-PEREZ: Form.

Page 243 WATERHOUSE - 10-19-21 1 2. Α. Correct. Okay. To the best of your 3 Ο. knowledge, as Highland's CFO, did Highland ever 4 make any fair market value adjustments to any 5 6 of the promissory notes that were carried on 7 its balance sheet and that were issued by any of the affiliates or Mr. Dondero? 8 9 I think I answered that question Α. I don't recall doing that for any of 10 the -- those -- those notes. So it would have 11 included the audit for the -- for the 2018 12 13 period. 14 Q. Okay. 15 MR. MORRIS: Can we go to the next 16 page. Do you see this is a note a list of 17 Ο. notes receivable? Do you see that? 18 19 Yes, I do. Α. 20 And do you see that this ties into Q. the page that we were just looking? 21 22 I'm sorry, can we go back to the Α. prior page? I mean, it was at 150,331,222. 23 Ιt 24 was on the prior page. Next page. Yes, it 25 agrees.

Page 244 WATERHOUSE - 10-19-21 1 Okay. So now let's look at that Q. schedule. So this was the face amount of all 3 of the promissory notes that Highland held at 4 the time this document was filed with the 5 6 bankruptcy court; right? 7 Α. Yes. There is a footnote there that says, 8 Ο. doubtful or uncollectible accounts are 9 evaluated at year-end. 10 Do you see that? 11 Α. I do. 12 13 Ο. Okay. And is it fair to say that as of the year-end 2018, the year before this, 14 15 that to the extent any of these notes were outstanding at that time, they weren't deemed 16 to be doubtful or uncollectible? 17 Yeah. For the 2018 audit, there 18 Α. weren't any -- there weren't any adjustments to 19 20 fair value. Okay. And during the bankruptcy, do 21 Ο. you recall that Highland subsequently reserved 22 for the Hunter Mountain Investment Trust note? 23 24 Α. Yes. Why did Highland -- were you 25 Q.

2 involved in the decision to reserve the Hunter

WATERHOUSE - 10-19-21

- 3 Mountain Investment Trust note?
- 4 A. I was not.
- 5 Q. Do you know why Highland decided to
- 6 reserve for the Hunter Mountain Investment
- 7 Trust note?
- 8 A. I don't know yet decision was made.
- 9 I believe it was made by someone at DSI.
- 10 Q. Okay. I'm just asking if you know
- 11 why.

1

- 12 Did you ever ask anyone why they
- 13 reserved for that particular note?
- 14 A. I don't recall.
- 15 Q. Do you know whether the debtor
- 16 reserved for any other note on this list during
- 17 the bankruptcy?
- 18 A. Again, I don't recall. I wasn't
- 19 part of any process of -- again, like any fair
- 20 value adjustments or anything to that degree.
- 21 Like I said, a lot of that was done by DSI and
- 22 it was kind of out of our court.
- Q. Okay. Do you know if any note
- 24 receivable on this list was ever deemed by the
- 25 debtor to be doubtful or uncollectible?

- 1 WATERHOUSE 10-19-21
 - 2 A. I don't -- I don't have a
 - 3 recollection of every filing, so I don't know.
 - 4 Q. Did you ever have a discussion with
 - 5 anybody at any time about whether any of the
 - 6 notes receivable on this list should be deemed
 - 7 to be doubtful or uncollectible?
 - 8 A. No. As I previously stated, we were
 - 9 told we didn't have to keep GAAP financials.
- 10 We weren't having -- you know, there is no
- 11 underlying audits being performed, so I mean,
- 12 it wasn't something I worried about.
- MR. MORRIS: I move to strike.
- Q. Did you ever have a conversation
- 15 with anybody about any of the notes receivable
- and whether they should be deemed to be
- 17 doubtful or uncollectible? Did you have the
- 18 conversation, yes or no?
- 19 MS. DANDENEAU: Objection to form.
- 20 A. I don't recall.
- 21 Q. Do you recall ever telling anybody
- 22 that you believed any of the notes receivable
- 23 on this list should be doubtful -- should be
- 24 deemed to be doubtful or uncollectible?
- MS. DANDENEAU: Objection to form.

Page 247 WATERHOUSE - 10-19-21 1 I don't recall. I mean, it may have Α. happened, you know, again, when we initially 3 getting DSI up to speed and going through 4 5 financials, it may have happened, but I don't recall specifically. 6 7 While you were the CFO of Highland during the time that the company was in 8 9 bankruptcy, did you have any reason to believe that any of the notes receivable on this list 10 other than Hunter Mountain Investment Trust 11 should have been characterized as doubtful or 12 13 uncollectible? 14 MS. DANDENEAU: Objection to form. 15 MS. DEITSCH-PEREZ: Form. 16 Α. I didn't know. I didn't form an Bankruptcy was new to me. 17 opinion. It still is new to me, even after going through this. 18 19 So I really didn't know what to expect nor 20 really -- you know, I didn't know. MR. MORRIS: I move to strike. 21 22 During the period of Highland's 0. bankruptcy when you were serving as CFO, did 23 24 you have any reason to believe any of the notes on this list were doubtful or uncollectible? 25

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Page 248
                  WATERHOUSE - 10-19-21
 1
                MS. DEITSCH-PEREZ: This is like the
 2.
          fifth time you've asked it. Object to the
 3
          form.
 4
 5
                MR. MORRIS: I'm moving to strike,
 6
          if you haven't noticed, because he's not
 7
          answering the question.
                MS. DEITSCH-PEREZ: He was answering
 8
 9
          the question, you just didn't like it, like
10
          the answer.
                MR. MORRIS: Good Lord.
11
                Go ahead, Mr. Waterhouse.
12
          Q.
                Again, I don't -- we brought up a
13
          Α.
14
     myriad of issues at the start of the bankruptcy
15
            I don't recall if this was one of them,
16
     but, again, there are a lot of things we
     couldn't change. Even, you know, I was told
17
     status quo, blah, blah, right, there is a
18
19
     stay, you can't -- you know, I don't recall
20
     specifically, but that doesn't mean it didn't
21
     happen.
22
                MR. MORRIS: I move to strike.
                During the time that Highland was in
23
          Ο.
24
     bankruptcy and you served as CFO, did you have
     any reason to believe that any of the notes
25
```

Page 249 WATERHOUSE - 10-19-21 1 receivable on this list were doubtful or uncollectible? 3 MS. DEITSCH-PEREZ: Object to the 4 5 form. 6 Α. Potentially. 7 Did you ever tell anybody that? Ο. As I just stated like five times, 8 Α. yes, we -- at the beginning after filing and we 9 were getting DSI and others up to speed, you 10 know, we had a myriad of discussions of a lot 11 of things and this was likely one of them. 12 13 don't -- but I don't recall specifically we 14 talked --15 0. I don't want to know -- I don't want to know what was --16 MS. DEITSCH-PEREZ: Wait, wait. 17 Excuse me. Mr. Morris, you did not let him 18 finish his answer. 19 20 I spoke -- we had -- we were Α. 21 bringing Fred Karesa and Brad Sharp (phonetic) up to speed on all of these items, contracts, 22 and investments and going through -- we had 23 24 hours and hours and hours of discussion. 25 then not only do I have to repeat this not

- 2 once, twice, three, four times with -- you
- 3 know, I mean, we -- I don't -- I don't remember

WATERHOUSE - 10-19-21

- 4 the sum culmination of all these discussions.
- 5 They all kind of blend together.
- 6 MR. MORRIS: Okay. I move to strike
- 7 and I will try one more time.
- 8 Q. Did you ever tell anybody at DSI
- 9 that you believed any of the notes receivable
- 10 on this list were doubtful or uncollectible?
- MS. DANDENEAU: Object to form.
- 12 A. Potentially.
- 13 Q. Potentially you told them or
- 14 potentially they were doubtful or
- 15 uncollectible?

1

- 16 A. Potentially I told them that we
- 17 needed to look at the value of these -- of
- 18 these assets.
- 19 Q. Okay. Did you -- okay. It is
- 20 potential that you told them and it is
- 21 potentially that you didn't; right?
- MS. DANDENEAU: Objection to form.
- 23 A. I've gone through that. I don't
- 24 recall specifically.
- 25 Q. So you should just -- I don't want

Page 251 WATERHOUSE - 10-19-21 1 to tell what you to do. Do you have --MS. DANDENEAU: Good. 3 0. Other than -- other than telling 4 them that they should look at the values, do 5 6 you have any recollection whatsoever of ever 7 having told anybody at DSI that any of the notes receivable on this page were doubtful or 8 9 uncollectible? 10 MS. DEITSCH-PEREZ: Object to the form. 11 MS. DANDENEAU: Objection. 12 13 Α. I recall having general discussions 14 about everything on our balance sheet which 15 would have included these -- these notes receivable. 16 17 Ο. Okay. I don't recall specifically where 18 Α. those discussions delved into. 19 20 Do you recall any discussion at all Ο. on the topic of whether any of these notes on 21 this list were doubtful or uncollectible? 22 23 MR. AIGEN: Mr. Morris, how on earth 24 is that question different from the 25 question that you just asked for the last

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Page 252
             WATERHOUSE - 10-19-21
 1
     five times? I mean, really I thought you
     were -- (overspeak.)
 3
           MR. MORRIS: Because he never
 4
 5
     answered it.
           MS. DEITSCH-PEREZ: Are you
 6
 7
     listening to him?
           MR. MORRIS: You know --
 8
 9
           MS. DEITSCH-PEREZ: He basically
     said that he had a conversation with DSI
10
     that went over all of this stuff and that
11
     conversation could have included the notes
12
13
     but he doesn't recall specifically.
14
           What more do you want him -- to ask
15
     of him?
           MR. MORRIS: I want him -- I would
16
     love him to say -- I would like him to
17
     testify to the truth, and that is he has no
18
     recollection.
19
20
           MS. DEITSCH-PEREZ: Well, the truth
     as you would like to see it, but -- but he
21
22
     is testifying truthfully. And I -- and, by
     the way, I move to strike that comment --
23
24
           MR. MORRIS:
                        Okay.
25
           MS. DEITSCH-PEREZ: -- because it
```

```
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 1
          suggests that he has not testified
          truthfully.
 3
                MR. MORRIS: I will ask my question
 4
 5
          again. And if at any time you want to
 6
          direct him not to answer, that is your
 7
          prerogative.
                Mr. Waterhouse, do you have any
 8
          Ο.
     recollection at all of ever telling anybody
 9
     from DSI that any of these notes were doubtful
10
     or uncollectible?
11
12
                MS. DANDENEAU: Object to form.
13
          Α.
                I don't remember specifically.
14
          Q.
                Do you remember generally that
15
     specific topic?
                We generally talked about assets,
16
          Α.
              If -- we had discussions of that and
17
     collectability in nature. I mean, of Highland,
18
     the funds, the CLOs, the entire complex. We
19
20
     had discussions like that, which is, you know,
     as you look at a billion dollar consolidated
21
     balance sheet.
22
23
                So I generally remember -- this is
24
     billions of dollars, including these assets --
     having discussions of this -- of this type.
25
```

Page 254 WATERHOUSE - 10-19-21 1 2. Ο. Do you believe that an affiliate loan on this list was doubtful or 3 uncollectible? Would you have told that to 4 5 DSI? 6 MS. DANDENEAU: Objection to form. 7 MS. DEITSCH-PEREZ: Object to form. If we had, like -- again, if we --8 Α. if -- if we weren't preparing financial 9 statements in accordance with GAAP, and -- you 10 know, if DSI at that point -- they were --11 12 again, I was new to bankruptcy. 13 The CRO is -- we are delegating 14 everything to the CRO. All the decisionmaking. 15 Remember -- remember when you and I went into 16 Delaware Court and we were saying DSI basically does everything, remember this, Mr. Morris? 17 You were my counsel at the time, and 18 19 basically we're running everything through DSI. 20 That was what this was like in the early part. Everything was communicated through 21 22 So DSI says this. DSI says that. is what we're doing, and we're pointing out 23 24 things to them. Now, they decide what direction this 25

```
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 1
 2.
     goes.
                Did you point out that any of
 3
          Ο.
     these --
 4
                 I don't recall specifically.
 5
          Α.
 6
          Ο.
                 Okay. At any time that you served
 7
     as Highland's CFO, did you ever point out to
     DSI that any of these loans were doubtful or
 8
     uncollectible?
 9
10
                 MS. DEITSCH-PEREZ: Object to the
          form.
11
                MS. DANDENEAU: Objection.
12
13
          Α.
                 If you're asking me if I had a
14
     conversation with DSI, if any of these loans
15
     were doubtful or uncollectible, I don't recall
     specifically.
16
                Do you recall that the debtor filed
17
     on the docket monthly operating reports?
18
19
          Α.
                 Yes.
20
                You prepared those personally,
          Q.
     didn't you?
21
22
                 MS. DEITSCH-PEREZ: Objection to
          form.
23
24
                 I didn't personally prepare them,
     the team did with DSI.
25
```

Page 256 WATERHOUSE - 10-19-21 1 Q. But you signed them; correct? My signature is on the MORs. 3 Α. And you signed them as the preparer 4 Ο. 5 of the document; correct? 6 Α. Yes, I did this pursuant to DSI's 7 instructions. Okay. You wouldn't have signed the 8 Ο. document if you didn't believe it to be 9 accurate; correct? 10 If I had reason to believe it 11 wasn't, presumably I wouldn't have signed it. 12 13 Ο. Okay. And do you have any reason to 14 believe right now that any monthly operating 15 report that has your signature on it was 16 inaccurate in any way? 17 MS. DEITSCH-PEREZ: Object to the 18 form. My understanding of the monthly 19 Α. 20 operating reports is we were filing them in accordance with the standards set by the Court. 21 22 It wasn't -- you know, again, I don't -- you know, it wasn't GAAP. It wasn't these other 23 24 standards, so I testified I didn't have experience in this. The CRO was running the 25

- 1 WATERHOUSE 10-19-21
- 2 show. I followed their advice.
- 3 Q. But you assured yourself that
- 4 everything in the report was accurate before
- 5 you signed them; correct?
- 6 MS. DANDENEAU: Objection to form.
- 7 A. I trusted the quidance from the CRO
- 8 and their team and their experience and their
- 9 quidance for doing this for many, many, many
- 10 years to -- to -- to categorize and put things
- in ways on the form.
- 12 You know, my team had -- had not
- 13 filled out these forms before and needed all of
- 14 this guidance. I'm not an expert in this. I
- 15 have oversight of it. I signed the form. DSI
- 16 told me to.
- 17 Q. And you and your team are the source
- 18 of the information that DSI used to create the
- 19 reports; correct?
- MS. DANDENEAU: Objection to form.
- 21 A. The books and records reside with
- 22 the -- with -- with the corporate accounting
- 23 team.
- Q. Okay. And the corporate accounting
- 25 team was the corporate accounting team that was

```
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 1
                   WATERHOUSE - 10-19-21
     under your direction; correct?
 3
          Α.
                 Yes.
          0.
                 So -- so your team was responsible
 4
     for maintaining Highland's books and records;
 5
 6
     correct?
 7
                 I'm sorry, my team was responsible?
          Α.
                 Correct.
 8
          Ο.
 9
                       They -- they -- they were
          Α.
                 Yes.
     the -- the -- the general ledger of Highland,
10
     that responsibility was with the corporate
11
     accounting team.
12
13
          Ο.
                 The corporate accounting group
     reported to you; correct?
14
15
          Α.
                 Yes.
16
                 MR. MORRIS: Can we put up 41,
          please.
17
                 (Exhibit 41 marked.)
18
19
                 All right. You will see that this
          Ο.
20
     is a report that is dated January 31st, 2020,
     but it is for the month ending December 2019.
21
22
                 Do you see that?
23
          Α.
                 I do.
24
                 And you signed this report in your
          Ο.
     capacity as the chief financial officer of
25
```

Page 259 WATERHOUSE - 10-19-21 1 Highland; correct? 2. Α. Yes. 3 And you're the preparer -- you're 4 Ο. 5 identified as the preparer of the report; 6 correct? 7 Α. That is correct. Do you recall participating in the 8 Ο. preparation of monthly operating reports? 9 10 As I testified earlier, it was put Α. together, you know, with the team. The team 11 worked with DSI to put these monthly operating 12 13 reports together. We had no experience at this 14 time of the monthly operating reports or things 15 of this nature. 16 MR. MORRIS: Can you turn to the next page, please. 17 Do you see a line item under assets 18 0. due from affiliates? 19 20 Α. Yes, I do. Okay. And to the best of your 21 Ο. 22 knowledge and understanding, as the person who is identified as the preparer of this report, 23 24 does that line item include the affiliate loans that we've been talking about? 25

Case 3:21-cv-00881-X Docume Exhibitato Piteme (30099/2446 Page 145 of 282 PageID 47068 Page 260 WATERHOUSE - 10-19-21 1 Again, I would have to see, just 2. Α. like we did with the financial statements of 3 Highland and NexPoint, I would have to see a 4 detailed build, but, you know, if you look at 5 the other line items, you know, the only other 6 place it could be would be in -- in other 7 8 assets. Q. Okay. And as a matter of 9 arithmetic, is it fair to say that is the value 10 of the assets due from affiliates was more than 11 25 percent of the value of Highland's total 12 13 assets as of 12/31/2019? 14 MS. DANDENEAU: Objection to form. 15 Α. I'm really not doing the mental math right now, so I've been going at this depo for 16 hours, so I'm really not -- you know --17 All right. No problem. 18 Ο. -- these are millions of dollars. 19 Α. 20 Let's look at the Footnote 1, Q. Do you see there is a reference to the 21 Hunter Mountain note? 22

25 was taken against that note?

Α.

Ο.

23

24

Yes, I see that in Footnote 1.

Okay. And that's the reserve that

Page 261 WATERHOUSE - 10-19-21 1 Α. Yes, that is what this indicates. Okay. And were you aware that the 3 Ο. reserve was being taken on that it was? 4 5 Α. I was -- I was aware, yeah, at some point, yes. 6 7 Okay. And are you aware of any reserve being taken with respect to any other 8 note that was issued in favor of Highland? 9 Again, as I testified, we didn't go 10 Α. through an analysis on -- on -- on the other 11 12 notes. 13 Ο. Can we turn --14 Α. I believe -- I believe it says that 15 in Footnote 1, fair value has not been determined with respect to any of the notes. 16 So this footnote -- footnotes, look, 17 there has been no determination. 18 19 The determination was made in Ο. 20 the audited financial statements just six months earlier; right? We saw that earlier? 21 22 Α. That was as of 12/31/18. I mean, things -- circumstances -- there's a bank --23 24 circumstances change, things change -- things change over time, you know, facts and 25

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1 WATERHOUSE - 10-19-21
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- 2 circumstances change. Again, you have to do an
- 3 analysis.
- 4 Q. Okay. And you do recall that in
- 5 Highland's 2018 financial statement, all of the
- 6 notes issued by affiliates and Mr. Dondero that
- 7 were due at year-end had a fair value equal to
- 8 the carrying value; correct? We looked at
- 9 that?
- 10 A. Yes. That was in the -- in the
- 11 disclosure for the -- for the affiliate notes,
- 12 yes.
- Q. And -- and you were obligated to
- 14 share with PwC any subsequent events between
- 15 the end of 2018 and the date that you signed
- 16 your management representation letter on June
- 17 3rd, 2019; correct?
- 18 MS. DEITSCH-PEREZ: Object to the
- 19 form.
- 20 A. Yes. I -- I signed the
- 21 management, you know, my signature is in the
- 22 management representation letter -- I hope I'm
- 23 answering your question -- that is dated in
- 24 June with the representations made in that
- 25 management representation letter.

Page 263 WATERHOUSE - 10-19-21 1 Ο. Okay. And there was nothing that caused PricewaterhouseCoopers to include in 3 subsequent events any adjustment to the 4 conclusion that the fair value of the affiliate 5 6 notes and the notes issued by Mr. Dondero equaled the carrying value; correct? 7 MS. DANDENEAU: Objection to the 8 form. 9 That is correct. That is what was 10 Α. in the -- in the -- in the footnotes. 11 Okay. So are you aware of anything 12 Q. that occurred between June 3rd, 2019 and 13 14 December 31st, 2019 that would have caused the 15 fair value of the notes to differ from the carrying value? 16 Yeah. Highland filed for 17 bankruptcy, things changed -- I mean, there was 18 a bankruptcy filed in October of -- of -- of 19 20 2019, right, the petition date that we've described earlier. 21 22 I mean, I had a -- I guess looking back naively, I thought we were going to get an 23 24 audit from PwC for year-ended 2019, and when we had discussions with PwC, they were like, are 25

Page 264 WATERHOUSE - 10-19-21 1 you crazy, we're not auditing this. Values change, all these things change, bankruptcy 3 changes the entire scenario. I mean -- and 4 they're like, we're not -- we're not touching 5 this. 6 And so, you know, I was like, okay, 7 sorry, I get it, okay, no an audit. 8 9 I mean, it is -- you know, and -you know, and we weren't preparing GAAP 10 financial statements. 11 Again, I didn't know what we were 12 13 doing in relation to our financial statements, 14 but these were the discussions I was having at 15 the time. And yeah, I mean, filing bankruptcy from what I got from outside auditors and 16 others involved changed things dramatically. 17 Okay. Highland wasn't the obligor 18 Ο. under any of the notes that we're talking 19 20 about; correct? 21 Α. No. 22 Ο. So --23 Α. That's right. 24 So can you identify any fact that Ο. would cause the fair value to deviate from the 25

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                  WATERHOUSE - 10-19-21
 1
 2.
     carrying value during the seven-month period
     between June 3rd and the end of the year, 2019?
 3
                MS. DANDENEAU: Objection to form.
 4
 5
          Α.
                     I mean, I'm putting myself back
 6
     at that time, right. Hindsight is 2020, but we
 7
     didn't do an analysis, but we would have done a
     fulsome analysis and looked at all of the facts
 8
     and circumstances at the time, but asset values
 9
     change. You know, there could have been a
10
     market crash in hindsight in 2020, which --
11
     which affected entities' abilities.
12
13
                There could have been all of these
     things, right, that -- that happen. It is --
14
15
     it is easy to look back in hindsight, but when
     you are looking at this in -- in realtime, the
16
     analysis is different, and again, we didn't do
17
     an analysis.
18
19
                Okay. You didn't do an analysis.
          Q.
20
                Do I have that right?
                I don't -- I don't recall doing one
21
          Α.
     or maybe -- you know, I don't recall doing one.
22
23
                MR. MORRIS: Okay. I'm going to
24
          take a break. I may be done, so the time
```

now is -- is 4:30 your time. Let's just

25

```
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                  WATERHOUSE - 10-19-21
 1
          take a short break until 4:40 your time.
                MS. DANDENEAU:
 3
                                 Okay.
                VIDEOGRAPHER: We're going off the
 4
 5
          record, 4:31 p.m.
 6
          (Recess taken 4:31 p.m. to 4:43 p.m.)
 7
                VIDEOGRAPHER: We are back on the
 8
          record at 4:43 p.m.
                MR. MORRIS: I have no further
 9
          questions.
10
                MR. RUKAVINA: Okay.
11
          Mr. Waterhouse, I will go next.
12
13
                        EXAMINATION
14
     BY MR. RUKAVINA:
15
                Sir, my name is Davor Rukavina.
          Ο.
16
     the lawyer for --
17
                MR. MORRIS: Hey, Davor, just before
          you begin, I just want to put on the record
18
19
          Highland's objection to documents that were
20
          produced to me 10 minutes before the
          deposition began.
21
                MR. RUKAVINA: What the basis of
22
          your objection?
23
24
                MR. MORRIS: That they were due
          quite some time ago, and the fact that you
25
```

```
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                  WATERHOUSE - 10-19-21
 1
          had -- I just think it's appropriate to --
          to dump documents on somebody 10 minutes
 3
          before the deposition. I just think
 4
 5
          that's --
                MR. RUKAVINA: Well, these are
 6
 7
          documents Highland produced. I'm not aware
          of any rule I have to give you advance
 8
          documents when I know for the record that
 9
10
          other than the exhibits that you sent to us
          last week, most of the exhibits you used
11
          today you did not provide to me prior to
12
13
          this deposition.
14
                MR. MORRIS: No, but the documents
15
          were produced by me in -- in litigation,
16
          right?
                MR. RUKAVINA: I'm going to use
17
18
          primarily, John, the documents that you
19
          produced to me today, but you may.
20
                MR. MORRIS: Primarily. I've got --
          I've got my objection. You have got your
21
22
          response. Proceed.
23
          Q.
                Mr. Waterhouse, again, I represent
24
     the advisors, HCMFA and NexPoint Advisors.
25
                Do you understand that?
```

```
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                  WATERHOUSE - 10-19-21
 1
          Α.
                Yes.
                You and I have never met or talked
 3
          Ο.
     before today, have we?
 4
 5
                No, I have -- I have heard your
     voice on calls before.
 6
 7
          Ο.
                Okay.
                MR. RUKAVINA: Madam Court Reporter,
 8
 9
          I will use a few exhibits today. My
          associate, Mr. Nguyen, will find some way
10
          to get them to you. I don't know how to do
11
          that, but it looks like you guys do.
12
13
                I am going to use numbers as well.
14
          But to differentiate them from Mr. Morris
15
          we're going to mark mine with the prefix A
          for advisors.
16
                Do you understand?
17
18
                COURT REPORTER: Yes.
19
                MR. RUKAVINA: Okay. Perfect.
20
          Ο.
                Okay. So, Mr. Waterhouse, let's
21
     start with those two HCMFA notes that you were
     asked about, one for 5 million and one for
22
     2.4 million.
23
24
                Do you recall those notes?
25
          Α.
                Yes.
```

```
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                  WATERHOUSE - 10-19-21
 1
          Q.
                Were you ever the CFO of HCMFA?
          Α.
                I don't recall.
 3
                So to the best of your recollection,
 4
          Ο.
     you were still an officer of HCMFA in 2019,
 5
 6
     just that your title was treasurer?
 7
                MR. MORRIS: Object to the form of
          the question. There is no leading here.
 8
 9
          He works for your client.
10
                MS. DANDENEAU: That is not -- that
          is not true.
11
                MR. MORRIS: He's the treasurer --
12
13
          he is the treasurer of your client.
          don't -- I'm going to object every time you
14
15
          try to lead, so...
                MR. RUKAVINA: Totally fine to
16
          object.
17
18
                MR. MORRIS: Okay.
19
          Ο.
                Please answer my question,
20
     Mr. Waterhouse.
                I'm sorry, could you repeat?
21
          Α.
22
     was...
23
          Ο.
                Yes. You were -- you testified
24
     earlier that in 2019 you were an officer of
25
     HCMFA; correct?
```

Page 270 WATERHOUSE - 10-19-21 1 Α. Yes, I testified that I was the treasurer and I didn't know if that incumbency 3 certificate, you know, was one that appointed 4 5 me as a treasurer, but yes. 6 Ο. I'm just trying to confirm that 7 sitting here today, to the best of your recollection, at that time you were -- your 8 title was treasurer. It was not chief 9 financial officer. 10 I don't recall that being my title. 11 Okay. And in May of 2019, however, 12 Q. 13 I think you testified you were the chief 14 financial officer of the debtor; correct? 15 MR. MORRIS: Objection to the form of the question. 16 17 Α. Yes, I was -- yes. Okay. As such, in May of 2019, did 18 Q. you have the authority, to your understanding, 19 20 to unilaterally loan \$5 million or \$2.4 million to anyone on behalf of the debtor? 21 22 MR. MORRIS: Objection to the form of the question. 23 24 Sorry, can you repeat that? Α. 25 Yes. So in your capacity as the Q.

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- 2 chief financial officer of the debtor, Highland
- 3 Capital Management, L.P., in May of 2019, did
- 4 you believe that you unilaterally, just Frank
- 5 Waterhouse, had the authority to loan on behalf
- of the debtor to anyone \$5 million and
- 7 \$2.4 million?
- 8 MR. MORRIS: Objection to the form
- 9 of the question.
- 10 A. No.
- 11 Q. Is it because loans of that amount
- would have had to be approved by someone else?
- 13 A. Yes.
- 14 Q. Who in '20 -- in May of 2019, if
- 15 Highland wanted to loan 5 million or
- 16 \$2.4 million to someone, what would have been
- 17 the internal approval procedure?
- 18 MR. MORRIS: Objection to the form
- 19 of the question.
- 20 A. If -- if we had loans of that nature
- 21 that needed to be made due to their size, we
- 22 would have gotten approval from the -- the
- 23 president of Highland.
- Q. And who that was individual?
- 25 A. It was James Dondero.

Page 272 WATERHOUSE - 10-19-21 1 Now, I'm going to ask you a Q. Okay. similar question but for a different entity. 3 In May of 2019, as the treasurer of 4 HCMFA, did you believe that you unilaterally 5 6 had the ability to cause HCMFA to become the borrower of a \$5 million loan and a 7 \$2.4 million loan? 8 9 MR. MORRIS: Objection to the form of the question. 10 11 Α. No. What would -- what would the 12 Ο. 13 approval have taken place -- strike that. 14 What would the approval process have 15 been like in May of 2019 at HCMFA for HCMFA to take out a \$7.4 million loan? 16 MR. MORRIS: Objection to the form 17 18 of the question. 19 The process would have been similar Α. 20 to what we just discussed on -- for Highland to make a loan to others. So, again, you know, 21 we -- we would have -- either myself or someone 22 on the team would have discussed this with 23 24 the -- the president and owner of -- of HCMFA. 25 And who was that individual? Q.

Page 273 WATERHOUSE - 10-19-21 1 That was James -- Jim Dondero. Α. So do I understand that in May of 3 Ο. 2019, on behalf of both the lender, Highland, 4 and the borrower, HCMFA, Mr. Dondero would have 5 6 had to approve \$7.4 million in loans? 7 MR. MORRIS: Objection to the form of the question. 8 9 Α. Yes. You mentioned when Mr. Morris was 10 Ο. asking you the NAV error, N-A-V error, with 11 respect to TerreStar, without writing us a 12 13 novel, unless you feel like you have to, can 14 you summarize what that NAV error was? What 15 happened? There was a -- in the Highland 16 Α. Global Allocation Fund, it owned at the time an 17 equity interest in a company called TerreStar. 18 19 And TerreStar is -- at the time was a private 20 company, and it may still be today. Again, I'm putting myself back then as a private company. 21 22 We had -- sorry, I don't mean we -the fund and the advisor used Houlihan Lokey 23 24 to -- to value that investment. And during that time there was some trades that were 25

Page 274 WATERHOUSE - 10-19-21 1 executed at market levels that were much lower than the Houlihan Lokey model. 3 And based on information and 4 5 discussions with the portfolio managers and, 6 you know, principals that were very familiar with TerreStar, it was determined that those 7 trades were non-orderly and they were not 8 considered in the valuation as consulted with 9 Houlihan Lokey and PricewaterhouseCoopers at 10 the time. 11 Subsequent to a -- I can't remember 12 13 the exact circumstances of why the SEC got I think it was due to this -- this 14 involved. 15 investment became a material position in the It triggered an SEC, kind of, inquiry. 16 fund. And as part of that inquiry, they questioned 17 the valuation methodology. "They" meaning the 18 SEC. 19 And at the culmination of that 20 process -- this is all summarized -- the value 21 22 that was -- that ultimately had to be used in the fund's NAV was different than -- materially 23 24 different than what the original valuation at Houlihan Lokey provided. 25

Page 275 WATERHOUSE - 10-19-21 1 2. And given that there was this fund was, as we discussed -- I don't know if we 3 discussed it, but it was an open-ended fund 4 5 that was going -- that was converting to a 6 close-end fund. 7 Due to the fact that it was an open-ended fund, you had to recalculate NAV and 8 see what the impact was on people -- on 9 investors coming in and out of the fund and if 10 there is a detrimental impact and to calculate 11 what that -- what that impact was and if there 12 13 was any amounts owed to the fund pursuant to 14 the error. 15 Were you personally involved Ο. internally at either Highland or HCMFA with 16 these investigations and discussions with the 17 18 SEC? 19 Α. I was. 20 Which other key people or senior Ο. 21 people at Highland were involved, to your recollection? 22 23 Α. Myself, Thomas Surgent, David Klos, 24 Lauren Thedford, Jason Post. 25 Mr. Dondero, was he --Q.

Page 276 WATERHOUSE - 10-19-21 1 I believe Cliff Stoops. I'm trying 2. Α. to think. And maybe that is -- that is -- that 3 is -- that is all kind I can recall at the 4 5 moment. 6 0. Do you recall whether it was 7 determined that the fund suffered losses as a result of this error? 8 The -- the fund -- the --9 Α. because the open-ended nature of the fund, 10 there were losses that were attributable to 11 investors. Meaning they -- they would have 12 redeemed and got a less money or -- or they 13 14 subscribed in and maybe because they didn't get 15 enough shares and then they later sold and then they were harmed in that fashion. 16 And there is -- there is -- there 17 were very -- there were very detailed 18 19 calculations and, you know, all these different 20 scenarios that we had to -- I'm sorry, I keep saying "we" -- that the individuals involved 21 22 had to calculate and quantify. Well, do you recall whether HCMFA 23 Ο. admitted certain fault and liability for this 24 25 error?

Page 277 WATERHOUSE - 10-19-21 1 I don't recall specifically. Α. Do you recall whether HCMFA caused 3 Ο. any funds to be paid to the investors and the 4 fund the subject of the NAV error? 5 6 Α. Yes. 7 Do you recall the approximate amount Q. of funds, moneys paid to the investors and the 8 9 fund? It was -- it was approximately 10 Α. \$7 million. 11 If I was to suggest 7.8 million, 12 Q. 13 would that ring more true or are you sticking 14 with your original answer? 15 Α. It was -- it was approximately 7 --7 to \$8 million. Again, I don't remember the 16 exact number, but it was in that ballpark. 17 So regardless of whether HCMFA 18 Ο. accepted fault or liability, it caused some 19 20 \$7 million or more to be paid out to affected investors in the fund? 21 22 MR. MORRIS: Objection to the form of the question. 23 24 And I want to make sure I'm Α. understanding your question because there is a 25

Page 278 WATERHOUSE - 10-19-21 1 lot of different entities that are going on to my head. 3 I think what you are saying is based 4 5 on this error, shareholders were harmed by this approximately \$7.8 million -- by approximately 6 \$7.8 million. Is that what you are asking? 7 Yes, sir. 8 Ο. Yes, that was -- again, I don't have 9 Α. the exact numbers. If I take -- it was -- it 10 was in that ballpark, and there is a detail 11 calculation and write-up that could, that --12 13 that exists someplace. Now, at that time, at the time that 14 Ο. 15 the NAV error occurred, was there a contract in 16 place between HCMFA and the debtor pursuant to which the debtor was providing services to 17 18 HCMFA? 19 MR. MORRIS: Objection to the form 20 of the question. 21 Α. Yes. 22 Was that contract generally called a Ο. shared services agreement? 23 24 It was generally called that, but Α. 25 there were -- there were -- I mean, it -- it --

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- 2 it depends on who you talk to, but yes,
- 3 generally, there were -- there are multiple
- 4 agreements.

1

- 5 Q. Pursuant to one or more of those
- 6 agreements, was the debtor providing certain
- 7 services to HCMFA?
- 8 MR. MORRIS: Objection to the form
- 9 of the question.
- 10 A. Yes.
- 11 Q. And can you at a very high level
- 12 summarize in 2018 and 2019 what those services
- 13 were?
- 14 A. Yes, there was a -- yes.
- Okay. Please -- please go -- go
- 16 through a short summary.
- 17 A. There was a -- a cost reimbursement
- 18 agreement between Highland Capital Management
- 19 Fund Advisors and Highland Capital Management,
- 20 L.P. That agreement was for what we referred
- 21 to as front office services, so investment
- 22 management, things of that nature.
- There was I think what most people
- 24 refer to as the shared services agreement that
- 25 was -- that agreement was between Highland

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1 WATERHOUSE - 10-19-21
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- 2 Capital Management Fund Advisors and Highland
- 3 Capital Management for back office services.
- 4 Q. And can you summarize what you mean
- 5 by back office services?
- 6 A. Those services were for accounting,
- 7 finance, tax, valuation, HR, IT, you know,
- 8 legal compliance, things of -- things of those
- 9 nature -- or things of that nature, excuse me.
- 10 Q. So in the spring of 2019, do you
- 11 recall whether HCMFA took the position that it
- 12 was actually Highland that caused the NAV error
- 13 to occur pursuant to the valuation services
- 14 that Highland was providing?
- MR. MORRIS: Objection to the form
- of the question.
- 17 A. I do not recall.
- 18 Q. Did you ever have any discussions
- 19 with anyone, Jim Dondero or anyone in the first
- 20 half of 2019 as to whether Highland, the
- 21 debtor, that is, had any liability to HCMFA
- 22 related to the NAV error?
- MR. MORRIS: Objection to the form
- of the question.
- 25 A. I do not recall.

Page 281 WATERHOUSE - 10-19-21 1 Q. And then you mentioned that the fund was being closed and some compensation related 3 to that. Can you -- can you elaborate? 4 5 were you referring to? 6 Α. Right. So the advisor, pursuant to 7 board approval, put a proposal in front of the shareholders of the Highland Global Allocation 8 Fund to convert it from an open-ended fund to a 9 closed-end fund. 10 So an open-ended fund, when 11 shareholders subscribe to the fund or redeem 12 into the fund, they do it at NAV. 13 14 When it is -- when you have a 15 closed-end fund, closed-end funds are -- are publicly-traded, like on the New York Stock 16 Exchange, exchanges like that, and -- and 17 shareholders or investors, they're not --18 19 they're -- they're not subscribing and 20 redeeming with the fund. They are like shares 21 of Apple. 22 Those shares of the Highland Global 23 Allocation Fund trade on an exchange, and that 24 is how you, you know, that is how, you know, 25 you become an equity owner in the fund or you

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1 WATERHOUSE - 10-19-21
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- 2 sell your shares and you are no longer an
- 3 equity owner.
- 4 As part of that proposal, the
- 5 advisor told shareholders if you -- if you vote
- 6 for this proposal to -- to convert it from an
- 7 open-ended fund to a closed-end fund, we will
- 8 pay you some amounts of money. I forgot -- a
- 9 certain number of points. I think it was
- 10 like -- it was like two to three points or
- 11 something -- something like that.
- 12 Q. Okay. You mentioned when Mr. Morris
- 13 was asking you, going back to those two
- 14 promissory notes, you will recall the 5 million
- and 2.4 million, you mentioned something to the
- 16 effect that Mr. Dondero told -- told you to pay
- 17 some moneys out of Highland. Do you remember
- 18 that discussion with Mr. Morris?
- 19 A. I do.
- 20 Q. So, to the best of your
- 21 recollection, did you have a discussion with
- 22 Mr. Dondero about making some payments in May
- 23 of 2019 out of Highland?
- 24 A. I recall, as I testified earlier,
- 25 that I had a conversation with Mr. Dondero

- 1 WATERHOUSE 10-19-21
- 2 for -- for these amounts attributable to -- it
- 3 was either the error -- you know, the error,
- 4 and in that conversation he said, go get the
- 5 money from Highland. I believe that is what I
- 6 testified earlier, and that -- that is my
- 7 recollection.
- 8 Q. Do you recall if that was an
- 9 in-person meeting or some other mode for the
- 10 meeting?
- 11 A. I -- I -- I recall that being
- 12 in-person.
- Q. Do you recall if anyone else was
- 14 present, or was it just you and Mr. Dondero?
- 15 A. I recall just he and I.
- 16 Q. And the moneys that he told you to
- 17 find from -- or get from Highland, was that in
- 18 the amount of \$5 million and \$2.4 million?
- 19 MR. MORRIS: Objection to the form
- of the question.
- 21 A. I believe so, but I would have to go
- 22 back and look and see when those moneys were
- 23 actually paid into the -- into the fund and,
- 24 you know, when those transfers were done. If
- 25 they were all done around that same time, then

- 1 WATERHOUSE 10-19-21
- 2 yes, I would say it was -- it was all related
- 3 to that.
- 4 Q. Did Mr. Dondero tell you that those
- 5 funds would be a loan from Highland to HCMFA?
- 6 A. I don't recall.
- 7 MR. MORRIS: Objection to the form
- 8 of the question.
- 9 Q. Now, and forgive me, I'm probably
- 10 the only non-American born here, but I speak
- 11 reasonably well in English. I don't recall,
- does that mean you don't remember or does that
- mean it didn't happen?
- MR. MORRIS: Objection to the form
- of the question.
- 16 A. It -- it means I don't -- I don't
- 17 remember.
- 18 Q. Did Mr. Dondero tell you to have
- 19 those two promissory notes prepared?
- 20 A. I don't recall.
- 21 Q. When you -- again, when you say, I
- 22 don't recall today, that means that sitting
- 23 here today, you just don't remember one way or
- 24 the other. Is that accurate?
- 25 A. Yes.

Page 285 WATERHOUSE - 10-19-21 1 2. Q. Is it possible that you, having heard what Mr. Dondero said and seeing funds 3 being transferred, assumed that that would be a 4 loan without him actually telling you that 5 would be a loan? 6 7 MR. MORRIS: Objection to the form of the question. 8 9 Sorry, I want to make sure -- did I Α. ask the amounts that were transferred that I --10 that -- that I assumed that that was a loan? 11 Well, let me -- let me take -- let 12 Q. 13 me try again. So you have established already that 14 there were quite a number of promissory notes 15 back and forth -- I'm sorry, quite a number of 16 promissory notes with affiliated companies and 17 individuals owing Highland money; right? 18 19 Α. Yes. 20 And you have established that there Ο. were many transactions and transfers going back 21 22 and forth over the years; right? 23 MS. DANDENEAU: Objection to form. 24 Α. In -- yes, in my capacity as CFO and

my employment, yes, that is -- yes.

25

Page 286 WATERHOUSE - 10-19-21 1 Ο. And that's part of the reason why you just can't remember some of the details 3 today because this -- this happened years ago, 4 and there were a number of transactions. 5 6 that accurate? 7 MS. DANDENEAU: Objection to the form. 8 9 MR. MORRIS: Objection to the form of the question. 10 I mean, I deal with thousands of --11 Α. of -- of -- of transactions, you know, whether 12 13 it has -- the processing of transactions, you know, if it has got, you know, more -- more 14 zeros, you know, behind it than others. 15 16 When you look at thousands of transactions over the years for funds and 17 advisors and -- and, you know, financial 18 19 statements, I mean, it is -- it is very hard 20 going back in -- in -- in my -- you know, 21 14-ish year career at -- at Highland to 22 remember a lot of those details, especially when I don't have any records or books or 23 24 anything like that, and -- and going back many 25 years.

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                  WATERHOUSE - 10-19-21
 1
                And that is fine. That -- that --
          Q.
     that is why I asked the question.
 3
                Is it possible in May of 2019 when
 4
 5
     Mr. Dondero told you to transfer the funds from
 6
     Highland, you just assumed on your own that
 7
     those would be loans without him actually
     telling you that those would be loans?
 8
 9
                MR. MORRIS:
                             Objection to the form
          of the question.
10
                I don't know.
11
          Α.
                I'm sorry, you --
12
          Q.
13
          Α.
                I said I don't know.
14
          Q.
                Okay.
                      Well, as the -- as the CFO
15
     for Highland, if you saw $7.4 million going
     out, you would feel some responsibility to
16
     account for that, wouldn't you?
17
                MR. MORRIS: Objection to the form
18
19
          of the question.
20
          Α.
                Yes.
                Is it fair to say that those would
21
          Ο.
     be in the range large enough to rise up to your
22
     level?
23
24
                MR. MORRIS: Objection to the form
          of the question.
25
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Page 288
                  WATERHOUSE - 10-19-21
 1
                If -- I don't know if I understand
 2.
          Α.
     your question. Those amounts would arise to my
 3
     level where I would be involved or ...
 4
                You would want to know what a
 5
          Ο.
     transfer for that amount, $7.4 million, was all
 6
 7
     about, as the CFO of Highland, wouldn't you?
                MR. MORRIS: Objection to the form
 8
 9
          of the question.
                Yes, I make it -- I mean, I -- I
10
     review all sorts of payments, I mean, even
11
     smaller dollar payments on a periodic basis,
12
13
     you know, to -- to -- to understand and to make
     sure that we are paying things in a -- you
14
15
     know, in -- in -- in an informed way. And, you
16
     know -- and we're -- and we're paying things
     pursuant to vendor contracts and things like
17
18
     that.
                So as part of that, is it possible
19
          Ο.
20
     that seeing $7.4 million go out you would have
     promissory notes made in order to keep a paper
21
22
     trail, assuming that those were loans, when
     perhaps they were never intended to be loans by
23
```

MR. MORRIS: Objection to the form

24

25

Mr. Dondero?

Page 289 WATERHOUSE - 10-19-21 1 of the question. Α. I don't know. As I testified 3 earlier, I had conversations with Mr. Dondero 4 about -- about the -- the -- the moneys that 5 6 were needed for the NAV error. And I recall him saying go get it from Highland -- or get it 7 from Highland. 8 Well, why did you sign those 9 Q. promissory notes and why didn't you have him 10 sign them? 11 MR. MORRIS: Objection to the form 12 13 of the question. 14 Α. I don't know. I don't know. 15 You mentioned earlier that you Ο. typically don't sign promissory notes. Am I 16 remembering your testimony correctly? 17 I mean, promissory notes on behalf 18 19 of the entities. Not yourself, obviously. 20 Α. Yes, that is what I said earlier. Do you recall any other promissory 21 Ο. notes in the million-plus range that you had 22 ever signed before on behalf of any entity? 23 24 There is -- there has been a lot of Α. 25 transactions over the years. I don't -- I

Page 290 WATERHOUSE - 10-19-21 1 don't -- I don't recall generally. I don't --I don't recall. 3 So -- but to the best of your 4 5 recollection, it was on your initiative, 6 following your discussion with Mr. Dondero, that you had someone draft those two promissory 7 notes; is that correct? 8 9 MR. MORRIS: Objection to the form of the question. 10 Yes, we would have -- the team, as I 11 Α. stated earlier, we don't draft promissory 12 13 "The team" meaning the accounting and 14 finance team. 15 So the team would have worked with 16 the legal group at Highland to draft any notes. Do you believe or do you have any 17 recollection as to whether you would have done 18 that pursuant to an email or telephone call or 19 20 in-person meeting? MR. MORRIS: Objection to the form 21 22 of the question. Are you asking if I would have -- if 23 Α. 24 those notes would have been drafted pursuant to 25 an email or phone call?

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                  WATERHOUSE - 10-19-21
 1
          Ο.
                Strike that.
                Do you recall whether you sent an
 3
     email to anyone asking them to draft those two
 4
 5
     promissory notes?
 6
          Α.
                I don't recall because, again,
 7
     once -- I would have instructed -- likely
     instructed the team to -- to work with the
 8
     legal group to draft these documents.
 9
10
                I -- I -- I -- yeah, I didn't -- I
     mean, that is more an operational-type
11
     procedure. So, you know, a manager or a
12
13
     controller or working with legal. You know,
14
     they -- they can certainly handle that task to
15
     get that -- you know, to request that from
16
     legal.
                And who on your team do you think
17
     you would have asked to do that?
18
19
                MR. MORRIS: Objection --
20
          Ο.
                Who would have been the logical
     person or people, if you don't remember their
21
22
     name today?
23
                MR. MORRIS: Objection to the form
24
          of the question.
                It -- it -- there is only two
25
          Α.
```

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1 WATERHOUSE - 10-19-21
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- 2 managers of the group. That would have been
- 3 Dave Klos or Kristin Hendrix.
- Dave was the -- one of his duties
- 5 was managing the valuation team, and so he was
- 6 intimately involved with this process. So, you
- 7 know...
- Q. Okay.
- 9 A. I don't recall specifically but, I
- 10 mean, my general -- you know, I -- I -- I
- 11 likely would have talked to Dave first about it
- 12 versus someone like Kristin who hadn't been
- 13 intimately involved.
- Q. And -- and do you have a view as to
- 15 whether it is most likely that you would have
- done that by email or in-person or how would
- 17 you believe you would have communicated that to
- 18 Mr. Klos?
- 19 MR. MORRIS: Objection to the form
- of the question.
- 21 A. I likely would have done that in
- 22 person. Again, if things of this nature
- 23 that -- again, you have to put ourselves back
- 24 to, we have been working on this very stressful
- 25 project for many, many months. And once the

- WATERHOUSE 10-19-21
- 2 go-ahead was to -- you know, we see the light
- 3 at the end of the tunnel with wrapping this up
- 4 and making shareholders whole -- sorry to say
- 5 "we" -- you know, the -- so the folks that are
- 6 involved in it.
- 7 I like to talk to people
- 8 face-to-face and -- and -- and go to -- and go
- 9 to their desk, because that shows if I'm going
- 10 to their desk that -- that is something that I
- 11 want done, you know.
- 12 Q. And do you remember, Mr. Waterhouse,
- 13 getting those two promissory notes in paper
- 14 format or by email before they were executed?
- MR. MORRIS: Objection to the form
- of the question.
- 17 A. I don't recall.
- 18 Q. For whatever was the ordinary course
- 19 back then in May 2019, would you expect to have
- 20 received them only on paper or would you have
- 21 expected to have received them in Word document
- or PDF document by email?
- MR. MORRIS: Objection to the form
- of the question.
- 25 A. I -- I didn't sign -- I signed very

Page 294 WATERHOUSE - 10-19-21 1 few documents via email. I can't say that it 2. never happened, but people either stopped by my 3 office and physically walked in documents for 4 5 signature that we discussed face-to-face. Or documents were -- if -- if --6 7 if -- if -- let's say I wasn't there or I wasn't available, documents were dropped off. 8 I had -- I had some in- and outboxes in front 9 of my -- my office there at the Crescent. 10 Documents would be dropped off for 11 There would be a cover sheet that 12 signature. 13 would be -- have been applied to those 14 documents detailing, you know, who dropped it off, the purpose, why, what time. 15 And then, you know, as I stated, I 16 don't draft documents and I always go to the 17 legal group and the compliance group to make 18 sure that they're in the loop. And there is 19 20 a -- a box or section that says, Has legal reviewed or approved, or something to that 21 22 nature. Again, I don't -- I don't have 23 24 access to that cover sheet anymore, but it was -- it was something to that effect. 25

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                  WATERHOUSE - 10-19-21
 1
                And my assistant, you know, if she
 2.
     was there, she would review that -- you know,
 3
     whatever was being dropped off. And if that
 4
     has legal, you know, reviewed or -- reviewed or
 5
     approved it, if that wasn't -- if that stuff
 6
     hadn't been done, it was like she would just
 7
     tell them like, go -- go -- go to the legal
 8
     group, because --
 9
10
                Let me -- let me pause --
          Q.
                MS. DANDENEAU: Let him finish.
11
                MR. MORRIS: Thank you. Go ahead.
12
13
          Α.
                I take -- go to the legal group
14
     because that -- that was my -- you know, I
15
     didn't -- I didn't review anything that -- that
     they weren't -- you know, or there wasn't some
16
     representation made to me that they had
17
     reviewed, approved in some capacity.
18
                Again, my -- my -- my goal, as CFO,
19
20
     is to provide transparency and make sure that
     groups like compliance and other things -- and
21
22
     the other group in legal are -- are in -- you
     know, their -- they're made aware of
23
24
     transactions of -- you know, that are crossing
25
     my desk.
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Page 296
                  WATERHOUSE - 10-19-21
 1
 2.
                Because I'm not in every
     conversation. They're not in every
 3
     conversation -- meaning legal compliance -- and
 4
 5
     I just want to make sure that -- that everyone
 6
     is in sync to, you know, to -- to the extent
 7
     possible.
                So if we summarize, you don't
 8
          Ο.
     specifically remember signing these two notes,
 9
     but most likely it would have been that they
10
     would have presented -- been presented to you
11
     physically on paper?
12
13
                MR. MORRIS: Objection to the form
14
          of the question.
15
          Α.
                They would -- they would have been
     presented physically on paper most likely or
16
     someone would have left it. But, I mean,
17
     again, I don't -- I don't recall.
18
19
                I understand. Understand.
          Ο.
20
                When you signed -- when you signed
     documents, when you personally signed
21
     documents, did you typically use a ink pen or
22
     did you use a stamp?
23
24
                No, I -- I -- I use a -- an -- an
          Α.
25
     ink pen.
```

Page 297 WATERHOUSE - 10-19-21 1 2. Q. Do you know -- was there a file at Highland kept anywhere with ink-signed 3 originals of a promissory notes in general or 4 these two promissory notes specifically? 5 6 MR. MORRIS: Objection to the form 7 of the question. Sorry, I just want to make sure I 8 Α. understand your question. Are you saying is 9 there a file somewhere that has ink-signed 10 originals of these two promissory notes? 11 12 Q. Yes. I would -- I would assume they're 13 Α. 14 some place. I mean --15 0. Well, was there a -- was there a place where Highland generally kept originals 16 of promissory notes owed to it? 17 I wouldn't -- no. 18 Α. 19 MR. RUKAVINA: Mr. Nguyen, would you 20 please pull up my A7, alpha 7. These are the two promissory notes, 21 22 Mr. Waterhouse. 23 (Exhibit A7 marked.) 24 And please -- Mr. Waterhouse, please Ο. 25 command my associate to scroll down as you need

Page 298 WATERHOUSE - 10-19-21 1 to, but I want you to take a very close look at your two signatures here and tell me whether 3 you believe, in fact, that you ink signed them 4 5 or whether you --6 MS. DANDENEAU: Mr. Rukavina, 7 Mr. Waterhouse has the copies. MR. RUKAVINA: Perfect. Then you 8 can take this down, Mr. Nguyen. 9 These -- these -- these signatures 10 Α. are identical, now that I stare at them, and I 11 mean, they are so close -- I mean, they're 12 13 identical that, I mean, even with my chicken scratch signature, I don't know if I can -- you 14 15 know, I do this 100 times, could I do that 16 as -- as precisely as I see between the two 17 notes. Well, that is why I ask. 18 Mr. Waterhouse, now that you have examined 19 20 them, does it seem like it is more likely that you actually electronically signed these? 21 22 MR. MORRIS: Objection to the form of the question. 23 24 Is -- I don't -- I don't recall Α. 25 specifically. As I said before, my assistant

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1 WATERHOUSE - 10-19-21
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- 2 did have a -- an electronic signature, and that
- 3 was used from time to time. It wasn't as
- 4 common practice back in 2019. It definitely
- 5 was more common practice when we had to work
- 6 from home and remotely for COVID because it
- 7 that made it almost impossible to, right,
- 8 provide wet signatures since we're all working
- 9 from home remotely.
- 10 Q. Well, going just for these two
- 11 promissory notes, Mr. Waterhouse, in light of
- 12 your inability to remember any details, are you
- 13 sure you actually signed either or both of
- 14 those notes?
- MS. DANDENEAU: Objection to form.
- 16 A. I don't recall specifically
- 17 signing -- actually physically signing these
- 18 notes. As I said before, I don't recall doing
- 19 that. This -- this looks like my signature,
- 20 but yet these two signatures are identical.
- 21 Q. So you don't recall physically
- 22 signing them, and I take it you don't recall
- 23 electronically signing them either?
- A. I don't recall. You know, Highland
- 25 has all my emails. If that occurred, you know,

Page 300 WATERHOUSE - 10-19-21 1 you know, I don't have any of these records is what I'm saying. I don't have any of those 3 records. 4 That is why I'm asking you these 5 0. 6 questions in great detail because I don't have I'm trying to -- I'm hoping that 7 those emails. you will give me some names or some details so 8 I can go look for more emails, but again, you 9 don't remember any -- any individual, other 10 than Mr. Dondero that we've discussed, you 11 don't remember any individual with whom you 12 13 discussed these promissory notes prior to their 14 execution? MR. MORRIS: Objection to the form 15 of the question. 16 I don't recall discussing it with 17 Α. anybody else. 18 19 Ο. Okay. 20 Α. I mean, prior --I understand. 21 Ο. 22 You know, there was no one else --Α. there was no one else in that meeting that I 23 24 recall with Mr. Dondero. 25 Now, when you established that by Q.

Page 301 WATERHOUSE - 10-19-21 1 May of 2019 --2. Α. And -- and from what I recall, and 3 the reason why I was by myself is -- is, you 4 know, I don't -- I don't want to speculate, I'm 5 6 sorry. Okay. We have established that by 7 May of 2019, in your view, the liabilities of 8 9 HCMFA exceeded its assets; correct? 10 Yeah. I mean, again, I don't have Α. financial statements in front of me, but I 11 think, if I recall, we'd have to go through the 12 13 testimony with Mr. Morris, I believe that was 14 the case. 15 0. In fact, you will recall that in April of 2019, Mr. Dondero signed a document 16 that extended the demand feature of two prior 17 notes to May 31, 2019. Do you recall that? 18 19 MS. DEITSCH-PEREZ: I think you 20 might -- maybe have the court reporter read that back. You might have misspoke. 21 22 (Record read.) 23 MR. RUKAVINA: And I did misspeak. 24 I meant to say to May 31, 2021. Do Ο. 25 you recall that, sir?

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                  WATERHOUSE - 10-19-21
 1
                MR. MORRIS: Objection to the form
          of the question.
 3
                Yes.
 4
          Α.
 5
                MR. RUKAVINA: And, Mr. Nguyen, just
 6
     so that the record is clear, will you please
 7
     pull up my Exhibit Alpha 10, A10.
                 (Exhibit A10 marked.)
 8
                You don't have this one in front of
          Q.
 9
     you, Mr. Waterhouse? This is the one that
10
     Mr. Morris used earlier. Do you see that
11
     document, sir?
12
13
          Α.
                Yes, I do.
                And this is what you were testifying
14
          Q.
     about before when Mr. Morris was asking you.
15
     Do you remember that?
16
17
          Α.
                Yes.
                So here is my question for you,
18
          Q.
     Mr. Waterhouse: As the chief financial officer
19
20
     of Highland, was it prudent for Highland less
     than three weeks later to be lending
21
22
     $7.2 million to an insolvent entity that
     couldn't even then pay its debts back to
23
24
     Highland?
25
                MS. DANDENEAU: Objection to form.
```

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Page 303
                  WATERHOUSE - 10-19-21
 1
                MR. MORRIS: Objection to the form
          of the question.
 3
                Sorry, I just want to make sure --
 4
          Α.
     are you asking me, did you say, was it prudent
 5
     for Highland to loan $7.4 million to HCMFA a
 6
 7
     few weeks after this document was executed?
                Yes, and at a time when HCMFA's
 8
          Ο.
     liabilities exceeded its assets.
 9
10
                MR. MORRIS: Objection to the form
          of the question.
11
          Α.
                I don't -- it is odd. I don't know.
12
13
                MR. RUKAVINA: You can take this
14
     exhibit down, Mr. Nguyen.
15
          0.
                Do you recall asking anyone,
     Mr. Dondero or -- or anyone outside as to
16
     whether Highland ought to be lending
17
     $7.4 million to HCMF regarding HCMF's
18
     creditworthiness?
19
20
                MR. MORRIS: Objection to the form
          of the question.
21
                I don't recall.
22
          Α.
                Did you receive personally any of
23
          Q.
24
     that $7.4 million?
25
          Α.
                No.
```

```
Page 304
                  WATERHOUSE - 10-19-21
 1
          Ο.
                Did you even --
                MR. MORRIS: I didn't hear that
 3
          question, sir.
 4
 5
                MR. RUKAVINA: The one that he
 6
          answered, John, or my new one?
                MR. MORRIS: No, no, your question,
 7
 8
          Davor.
                MR. RUKAVINA: I had asked him
 9
10
          whether he received any of the
          $7.4 million. He said no.
11
                MR. MORRIS: Yeah. I thought there
12
          was a question after that. Maybe I was
13
14
          mistaken. I apologize.
15
                MR. RUKAVINA: I had started a new
          question, so here, let me start the new
16
          question again.
17
                Did you personally receive any
18
          Ο.
     direct benefit from those two notes for
19
     $7.4 million?
20
21
          Α.
                No.
22
                Did you ever personally consider
          0.
     yourself obligated to repay either or both of
23
24
     those notes?
25
          Α.
                No.
```

Page 305 WATERHOUSE - 10-19-21 1 2. MR. RUKAVINA: Pull up those notes again, Mr. Nguyen. 3 You can have them in front of you, 4 Exhibit 7, Mr. Waterhouse, whatever is easier 5 6 for you. If you go to your signature page, my 7 question to you is, why did you not include your title as treasurer by your name, Frank 8 9 Waterhouse? 10 MS. DANDENEAU: Objection to form. Α. I didn't -- I didn't draft this 11 document. 12 13 So you relied on whoever drafted it to draft it correctly? 14 15 Α. Yes. Okay. But back then when you signed 16 Ο. this, did it ever cross your mind that you were 17 the maker on these notes? 18 19 Α. No. 20 Back then when you signed this Ο. document, did it ever cross your mind that you 21 22 could be a co-obligor on these notes? I didn't receive \$7.4 million, 23 Α. No. 24 I mean... 25 But can you say that HCMFA received Q.

Page 306 1 WATERHOUSE - 10-19-21 \$7.4 million? I would have to go back and look and 3 Α. check in, you know, the -- the financial 4 records and the bank statements. 5 6 MR. RUKAVINA: You can take this 7 exhibit down, Mr. Nguyen. Mr. Waterhouse, I'm not trying to be 8 Ο. a smart-ass, but if the law says that because 9 of the way that you signed this promissory 10 note, if that is what the law says, that that 11 made you personally -- personally liable, then 12 13 you would agree with me that that was never your intent? 14 15 MR. MORRIS: Objection to the form 16 of the question. That was never -- I wouldn't sign a 17 Α. note and not get consideration in return. 18 19 So putting all other issues aside, Ο. 20 if the law -- if the law says that you were 21 liable for those notes because of how you signed them, then would you agree with me that 22 these notes are a mistake? 23 24 MR. MORRIS: Objection to the form

of the question.

25

```
Page 307
                  WATERHOUSE - 10-19-21
 1
                MS. DANDENEAU: Objection to the
          form.
 3
          Α.
 4
                Yes.
 5
                So do you agree with me that it's
          Ο.
 6
     odd -- I think that is the word you used --
 7
     that Highland would be loaning $7.4 million a
     few weeks after that extension to an entity
 8
     whose liabilities exceeded its assets, and you
 9
     would agree with me that it was never your
10
     intention to be in any way liable for these two
11
12
     promissory notes; correct?
13
                MR. MORRIS: Objection to the form
14
          of the question.
15
                Sorry, you -- you asked a lot there.
          Α.
                MR. RUKAVINA: I will strike it and
16
     I will move on.
17
                Let's go to -- pull up Exhibit 9,
18
     please Mr. Nguyen -- Alpha 9, I'm sorry, Alpha
19
20
     9, A9.
                 (Exhibit A9 marked.)
21
22
                Sir, take a moment to look at this,
          Ο.
     but this is an email, and you will see attached
23
24
     July 31, 2020 affiliate notes.
25
                Do you see that attachment?
```

```
Page 308
                   WATERHOUSE - 10-19-21
 1
          Α.
                Yes.
                Okay. And do you see an entry for
 3
          Ο.
     Highland Capital Management Fund Advisors?
 4
 5
                MR. MORRIS: I'm sorry, hold on.
 6
          Where are you looking?
 7
                MR. RUKAVINA: Last page, John.
                MR. MORRIS: Is it the page on the
 8
 9
          screen?
10
                MR. RUKAVINA: Oh, I'm sorry.
          Mr. Nguyen just did it. Yes, the last page
11
12
          there.
13
                MR. MORRIS: Thank you.
                Do you see an entry there for HCMFA?
14
          Q.
15
          Α.
                Yes.
                About $10.5 million.
16
          Ο.
                Do you see that?
17
                I do.
18
          Α.
19
                And, now, do you have any
          Ο.
20
     explanation for why if HCMFA owed $7.4 million,
     plus the 5.3 million that had been extended,
21
     why that amount was only 10.5 million?
22
23
          Α.
                I don't know.
                               Okav.
24
                MR. RUKAVINA: Close this one and
          pull up, Mr. Nguyen, the schedules,
25
```

```
Page 309
                  WATERHOUSE - 10-19-21
 1
          schedule of assets. What exhibit is this
          of ours, Mr. Nquyen?
 3
                              This is All.
                MR. NGUYEN:
 4
 5
                MR. RUKAVINA: Oh, this will be A11.
                 (Exhibit All marked.)
 6
 7
                You don't have this in front of you,
          Q.
     Mr. Waterhouse?
 8
                Okay.
 9
          Α.
                This is what Mr. Morris used
10
          Ο.
     earlier. Do you remember looking at this with
11
     Mr. Morris?
12
13
          Α.
                Yes.
                MR. RUKAVINA: You might have to
14
15
          zoom in a little. Okay.
16
          Ο.
                Now, I see Affiliate Note A, B, and
17
     С.
                Do you have any recollection as to
18
19
     why the names of the affiliates are omitted?
20
          Α.
                I don't. I testified earlier that,
     you know, the team worked with DSI in providing
21
     these. I -- I don't -- I don't know.
22
                Can we deduce -- is it logical to
23
          Ο.
24
     deduce that Affiliate Note A would be NexPoint
     given its size of $24.5 million?
25
```

```
Page 310
                  WATERHOUSE - 10-19-21
 1
                MR. MORRIS: Objection to the form
          of the question.
 3
                I mean, it -- it is a -- it is -- it
 4
          Α.
 5
     is approximate.
 6
          0.
                Well, can we -- can we deduce -- or,
 7
     I'm sorry, strike that.
                Can you, sitting here today,
 8
     logically conclude that Affiliate Note B or C
 9
     represents HCMFA?
10
                MR. MORRIS: Objection to the form
11
          of the question.
12
13
          Α.
                I don't know. I don't know.
14
     can't.
15
          0.
                Okay. As of the petition date, we
     have established that HCMFA, under promissory
16
     notes, owed $7.4 million and $5.3 million to
17
     the debtor; correct?
18
                MR. MORRIS: Objection to the form
19
20
          of the question.
21
          Α.
                Yes.
                Okay. And by my reckoning, that
22
          Ο.
     would be somewhere approaching $13 million.
23
24
                MR. MORRIS: Objection to the form
          of the question.
25
```

Page 311 WATERHOUSE - 10-19-21 1 It would be \$12.7 million. Is that Ο. generally correct? 3 Sorry, the amounts were 7.4, 5.3. 4 Α. 5 Ο. Yes. 6 Α. Okay. Yeah, that -- I can 7 do that math, yes. Do you have any explanation or any 8 Ο. understanding of why there is no similar entry 9 listed here on the schedule of assets filed 10 with the bankruptcy court? 11 MR. MORRIS: Objection to the form 12 13 of the question. 14 Α. I don't know. We have to look at 15 the supporting schedules, like I talked about other -- presumably there is -- there is a 16 build to the schedule that would provide the 17 detail. 18 19 Well, that was going to be my next Ο. 20 question. You anticipated it. 21 MR. RUKAVINA: You can -- you can 22 take this down, Mr. Nguyen. Do you believe that whenever you and 23 Ο. 24 your team provided the underlying data to the 25 financial advisor that the actual names of the

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1 WATERHOUSE - 10-19-21
```

- 2 affiliates for Affiliate Note A, B, and C would
- 3 have been listed there?
- 4 A. Are you asking we provided the names
- 5 to the financial advisor? I don't -- I don't
- 6 understand who the financial advisor is.
- 7 Q. I'm sorry, DSI.
- 8 Let me ask the question this way,
- 9 Mr. Waterhouse.
- 10 Whenever you provided information
- 11 about the affiliate notes to DSI, do you
- 12 believe that you would have included the actual
- 13 names of the affiliates, you or your team, or
- 14 that you would have done the Affiliate Note A,
- 15 Note B, Note C?
- MR. MORRIS: Objection to the form
- of the question.
- 18 MS. DANDENEAU: Objection to the
- 19 form.
- 20 A. We -- like I testified earlier, when
- 21 we were -- we gave everything to -- to DSI. We
- 22 were giving all of our records, all of our
- 23 files, everything to DSI. We weren't redacting
- information or saying, hey, here is a note,
- 25 here is Affiliate Note A or B.

Page 313 WATERHOUSE - 10-19-21 1 2. I mean, it was -- our job and our focus -- and I testified in court back in 2019; 3 right -- was -- was to be transparent and, you 4 5 know, get DSI up to speed on -- on the matters 6 at Highland. So I can't see us redacting at 7 that point. MR. RUKAVINA: Mr. Nguyen, will you 8 9 please pull up Mr. Morris' Exhibit 36. 10 Just the very first page, the very top email. You might zoom in a little bit. 11 Now, you recall being asked about 12 Q. 13 this by Mr. Morris? Yes, I do. 14 Α. 15 Ο. And you wrote: The HCMFA note is a 16 demand note. 17 You wrote that; right? 18 Α. Yes. 19 And, in fact, weren't there by that Ο. 20 point in time several notes? Yes, there were. Again, I don't --21 Α. I don't remember everything specifically. I 22 23 mean --24 Q. I understand. I understand. 25 So this is an example where -- where

Page 314 WATERHOUSE - 10-19-21 1 you might have made a mistake by referring to a singular instead of a plural; right? 3 Yes. Α. 4 5 Ο. Okay. And you -- you wrote -- a 6 couple of sentences later, you wrote: There was an agreement between HCMLP and HCMFA the 7 earliest they could demand is May 2021. 8 9 You wrote that; right? 10 Α. Yes. But I think you -- you agreed with 11 Ο. Mr. Morris that that can't possibly apply to 12 13 the May 2019 notes, can it? MR. MORRIS: Objection to the form 14 15 of the question. That is not what he testified to. 16 Let me ask -- let me ask a different 17 Ο. question. 18 19 Sitting here today -- or if you can 20 answer me from your memory on October 6, 2020 -- did the April acknowledgment that 21 extended the maturity date apply to the 22 May 2019 notes also? 23 24 I don't recall specifically. Α. 25 Well, you recall that the notes that Q.

Page 315 WATERHOUSE - 10-19-21 1 you signed were demand notes; right? Α. Yes. 3 Do you find it logical, based on Ο. 4 5 your experience, that had they intended to have 6 a different or a set maturity date, you would have instructed that that set maturity date be 7 included instead of a demand feature? 8 9 MR. MORRIS: Objection to the form of the question. 10 Sorry, just want to make sure I 11 Α. understand. You are saying that -- that the 12 13 \$5 million note, the \$2.4 million note, if 14 those were supposed to be a term note, that I 15 would have made sure that those were a term 16 note? I'm saying -- I'm saying, 17 0. 18 Mr. Waterhouse, that on May the 2nd and May the 19 3rd, 2019, if you intended that those two 20 promissory notes could not be called until May 2021, would you have included such language in 21 22 those two promissory notes? 23 MR. MORRIS: Objection to the form 24 of the question. I guess -- I'm sorry, I don't recall 25 Α.

Page 316 WATERHOUSE - 10-19-21 1 putting language in those May notes. I don't 2. remember what language you are referring to. 3 Well, let's read this again. 4 Ο. 5 There was an agreement between HCMLP 6 and HCMFA the earliest they could demand is May 7 2021. Do you recall that agreement? 8 9 Α. Yes, that was the agreement we looked at earlier; correct? 10 Okay. Yes. 11 Ο. Do you -- do you understand now that 12 13 that agreement that we looked at earlier also applied to the May 2019 notes that you signed? 14 15 Α. I don't -- I don't know. But as of October 6, 2020, you're 16 Ο. writing that there is one demand note and 17 you're categorizing that demand note as not 18 19 being demandable on May 2021; correct? 20 Α. Yes. And you know now that you made at 21 Ο. least one mistake in this email; correct? 22 23 MR. MORRIS: Objection to the form 24 of the question. 25 Α. Yes.

```
Page 317
                  WATERHOUSE - 10-19-21
 1
                MR. RUKAVINA: You can pull this
          down, Mr. Nguyen.
 3
                So, Mr. Waterhouse, you don't
 4
          Ο.
     remember Mr. Dondero telling you to make these
 5
 6
     loans or not. HCMLP was loaning $7.4 million
 7
     to someone that their assets were less than
     their liabilities.
 8
 9
                We don't see on the July list of
     notes, where there is $12.7 million of notes,
10
     we don't see that on the bankruptcy schedules,
11
     and we have this Exhibit 36 where you are
12
13
     confused.
14
                Are you prepared to tell me, sir,
15
     today that you might have made a mistake in
     executing those two promissory notes?
16
                MR. MORRIS: Objection to the form
17
18
          of the question.
                I -- I don't know.
19
          Α.
20
                And if it turns out that you're
          Q.
     personally liable for those promissory notes,
21
     it would certainly be a mistake, wouldn't it?
22
                MS. DANDENEAU: Objection to the
23
24
          form.
25
                MR. MORRIS: Join.
```

```
Page 318
                  WATERHOUSE - 10-19-21
 1
          Α.
                Yes.
                If Mr. Dondero testifies that he
 3
          Ο.
     never told you to make these loans, would you
 4
 5
     disagree with his testimony?
 6
                MR. MORRIS: Objection to the form
 7
          of the question.
                Like I testified earlier with my
 8
          Α.
     conversation with Mr. Dondero, all I recall is
 9
     he said, get the money from Highland.
10
                And if Mr. Dondero testifies that
11
     he, in consultation with other senior personnel
12
13
     at Highland, decided that Highland needed to
14
     pay HCMFA $7.4 million as compensation for the
     NAV error and not a loan, would you have any
15
16
     reason to disagree with Mr. Dondero?
                MR. MORRIS: Objection to the form
17
18
          of the question.
                If that was -- if that was his
19
          Α.
20
     intent, yes, it would -- I would --
21
          Ο.
                Do you have any reason to disagree
     with him?
22
23
                MR. MORRIS: Objection to the form
24
          of the question.
                If that was his intent, I don't
25
          Α.
```

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1 WATERHOUSE - 10-19-21

2 know. I don't know how I disagree with that.

3 Q. And just to confirm, you don't

4 remember ever asking Mr. Dondero whether you

5 should have two promissory notes prepared?

- 6 A. No.
- 7 Q. And you don't remember discussing
- 8 with Mr. Dondero what the terms of those two
- 9 promissory notes should be?
- 10 A. I don't recall -- I testified all I
- 11 recall is he said, get the money from Highland.
- 12 I don't -- the -- the terms of the note, I
- don't recall ever having a discussion around
- 14 the terms of the note, but since I don't draft
- 15 the notes, that -- there could have been a
- 16 conversation with other people later.
- 17 Q. Do you have any memory of whether
- 18 after the notes were drafted, but before you
- 19 signed them, that you communicated with
- 20 Mr. Dondero in any way to just confirm or -- or
- 21 get his blessing or ratification to signing
- 22 those notes?
- MR. MORRIS: Objection to the form
- of the question.
- 25 A. I don't recall.

Page 320 WATERHOUSE - 10-19-21 1 Q. Again, the only thing you remember, sitting here today, was Mr. Dondero said, get 3 the money from Highland, and that is it, that 4 5 is all you remember? 6 MR. MORRIS: Objection to the form 7 of the question. I testified to that several times. 8 Α. This was over two years ago. A lot has 9 happened. That is all I recall. 10 And help me here. I'm not very 11 Ο. technologically astute. When you -- and I -- I 12 13 recognize that you do it rarely, but when you 14 sign a document electronically, do you believe 15 that there is an electronic record of you 16 having authorized or signed a document electronically? 17 MR. MORRIS: Objection to the form 18 19 of the question. 20 Α. I -- I don't know the tech answer to that, but, you know, since I don't have -- I 21 22 don't ever attach my signature block electronically, my assistant would have done 23 24 that, and if that is done over email like we did several times -- you know, multiple, 25

Page 321 WATERHOUSE - 10-19-21 1 multiple times over COVID, she would attach my signature block and then email it out to 3 whatever party. 4 5 What was your assistant's name in 0. 6 May 2019? 7 It was Naomi Chisum. Α. Is she the only one? I'm sorry, was 8 Ο. she your only assistant that would have maybe 9 facilitated logistically something like you 10 just described? 11 You know, she was out on maternity 12 Α. 13 leave at some point. I don't -- I don't recall 14 those dates where she was out for maternity 15 leave. There was -- there were folks backing 16 her up. I don't recall specifically who those -- who those, you know, administrative 17 assistants were, and I don't recall 18 19 specifically if she was out during this time on 20 maternity leave. I do know that that she was out for 21 22 a period of time, or who knows, or she could have been on vacation that day or, you know, I 23 don't know. 24

Switching gears now, the two

25

Q.

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- complaints that have been filed that is against 2.
- HCMFA and NexPoint, did you see any drafts of 3
- those complaints before they were filed? 4
- 5 MR. MORRIS: Objection to the form
- 6 of the question, and to the extent that you
- 7 had any communications with counsel or you
- were shown drafts of the complaints by 8
- counsel while you were employed by 9
- 10 Highland, I direct you not to answer.
- I -- I reviewed documents yesterday 11
- with counsel here. I believe that is the first 12
- 13 time I have ever seen those.
- 14 Okay. Did you ever discuss with Ο.
- Mr. Seery these two lawsuits before or after 15
- they were filed? 16
- I don't recall. 17 Α.
- Were you ever interviewed by legal 18 Q.
- counsel, to your knowledge, about these 19
- 20 promissory notes before the complaints were
- Without going into what was said, were 21 filed?
- you ever interviewed by legal counsel? 22
- 23 MR. MORRIS: Objection to the form
- 24 of the question.
- I don't recall. 25 Α.

Page 323 WATERHOUSE - 10-19-21 1 Obviously with COVID, it changed, Ο. but -- but before COVID, did you used to meet 3 with Mr. Seery from time to time in-person? 4 Yeah, I mean, so before COVID -- so 5 Α. 6 we're talking kind of late March, early April, right, there was about -- I don't remember the 7 specific date when the board for Highland was 8 appointed. I believe it was around February of 9 2020, so maybe there was a month-and-a-half, 10 two-month window where we were meeting 11 in-person or, you know, like we were actually 12 13 in the office, excuse me, we were in the office. 14 15 And, you know, when they were first appointed, the board members and Mr. Seery 16 were -- were definitely down here more 17 18 in-person. 19 Did you ever see Mr. Seery taking Ο. 20 written notes of -- of his meetings with you or others? 21 22 I don't recall. Α. Do you recall on any Zoom or video 23 Ο. 24 conference with Mr. Seery, seeing him take notes, written notes? 25

Page 324 WATERHOUSE - 10-19-21 1 The Zoom calls we had, I don't Α. recall having seen video or, you know, or if it 3 was on Zoom, I just remember it being -- well, 4 5 no, you know what, there were some -- you know, 6 I take that back. 7 So there were -- there were some times that I did remember seeing Mr. Seery 8 on -- on some of the Zoom calls. 9 Well, let me --10 Ο. I don't -- sorry, I'm thinking. 11 Α. thinking -- I'm going back. I'm trying to 12 13 process this. I can make it much quicker, 14 Q. 15 Mr. Waterhouse. I have heard -- I have heard that Mr. Seery is a copious note taker. 16 17 Do you have any knowledge about that? 18 19 Α. No. 20 Okay. Switching gears yet again, Q. and this will be last theme. Do you need a 21 restroom break, or are you good to go for 22 another half an hour? 23 24 MS. DEITSCH-PEREZ: I need a 25 restroom break.

```
Page 325
                  WATERHOUSE - 10-19-21
 1
                MR. RUKAVINA: Can we make it five
          minutes?
 3
                THE WITNESS: Five minutes would be
 4
 5
          great.
 6
                VIDEOGRAPHER: We're going off the
 7
          record at 5:53 p.m.
          (Recess taken 5:53 p.m. to 5:59 p.m.)
 8
 9
                VIDEOGRAPHER: We are back on the
          record at 5:59 p.m.
10
                Mr. Waterhouse, I had asked you
11
          Ο.
     earlier about contracts between HCMFA and the
12
13
     debtor, and now I'm going to talk about
14
     contracts between the debtor and NexPoint
15
     Advisors.
                Okay?
16
          Α.
                Okay.
                Now, were there contracts similar to
17
          Ο.
     the ones with HCMFA that NexPoint had in the
18
19
     nature of employee reimbursement and shared
20
     services?
                Yes, they -- NexPoint Advisors and
21
          Α.
22
     Highland Capital Management Fund Advisors had
     cost reimbursement and shared services
23
24
     agreements with Highland Capital Management,
25
     L.P.
```

Page 326 WATERHOUSE - 10-19-21 1 And was that shared services Ο. agreement, to the best of your understanding, 3 in place as of December 31, 2020? 4 It was -- it was terminated at some 5 Α. 6 point, and I remember the contracts had 7 different termination dates, but I think the -the date of termination was January 31st of 2021, after the termination was put in. 9 10 So yeah, it would be in place at the end of the year of December -- it would be in 11 place at December 31st, 2020. 12 13 And pursuant to that agreement as of 14 December 31st, 2020, was the debtor providing 15 what you would describe as back office services to NexPoint? 16 Yes. 17 Α. Would those have included accounting 18 Ο. services? 19 20 Α. Yes. And as part of those accounting 21 Ο. services, would the debtor have assisted 22 NexPoint with paying its bills? 23 MR. MORRIS: Objection to the form 24 of the question. 25

```
Page 327
                   WATERHOUSE - 10-19-21
 1
          Α.
                 Yes.
                 So let's break that up. You were a
 3
          Ο.
     treasurer of NexPoint as well in December of
 4
 5
     2020?
 6
                MR. MORRIS: Objection to the form
 7
          of the question.
          Α.
                 Yes.
 8
 9
                 Okay. And in December of 2020, did
          Q.
     NexPoint have its own bank accounts?
10
          Α.
                 Yes.
11
                And did it use those bank accounts
12
          Q.
13
     to pay various of its obligations?
14
          Α.
                 Yes.
15
          Q.
                Did employees of the debtor have the
     ability to cause transfers to be made from
16
     those bank accounts on behalf of NexPoint?
17
18
          Α.
                 Yes.
                And is that one of services that the
19
          0.
20
     debtor provided NexPoint, basically ensuring
     that accounts payable and other obligations
21
     would be paid?
22
23
          Α.
                 Yes.
24
                MR. MORRIS: Objection to the form
          of the question.
25
```

```
Page 328
                   WATERHOUSE - 10-19-21
 1
          Q.
                 You answered yes?
          Α.
                 Yes.
 3
                 And the payments, though, whose
 4
          Ο.
     funds would they be made from?
 5
                 From the bank account of NexPoint
 6
          Α.
 7
                 If they were NexPoint advisor
     Advisors.
     obligations, it would be made from NexPoint
 8
     Advisors' bank account.
 9
10
                 So let's pull up Exhibit Alpha 1.
     You should have that -- it is my Tab 1 or my
11
     Exhibit 1.
12
13
                 (Exhibit A1 marked.)
14
          Q.
                 So this is a -- this is a series of
15
     emails, Mr. Waterhouse. Let's look at the
     first page here, November 25, 2020, between
16
     Kristin Hendrix and yourself.
17
18
                 Do you see that, sir?
19
          Α.
                 I do.
20
                And do you see where Ms. Hendrix
          Q.
     writes:
21
              NPA.
22
                 Do you know what NPA stood for?
23
          Α.
                 Yes.
24
          Q.
                 And what does it stand for?
                 NexPoint Advisors.
25
          Α.
```

Page 329 WATERHOUSE - 10-19-21 1 Ο. And was that how you-all internally at Highland refer to NexPoint Advisors, L.P.? 3 I mean, yes, amongst other things. 4 Α. And she writes at the bottom of her 5 Ο. 6 email: Okay to release? 7 Do you see that? Α. Yes, I do. 8 9 Q. So what --10 MR. MORRIS: Hold on one second. Okay. Go ahead. 11 MR. RUKAVINA: 12 Yeah. 13 0. So what is -- what is Ms. Hendrix 14 here on November 25 asking of you? 15 Α. She is asking me -- so she -- these 16 are -- these are payments -- typically we would do an accounts payable run every week at the 17 end of every Friday. But looking at this date, 18 it is Wednesday, November 25th, which means, to 19 20 me, it is likely Thanksqiving weekend. So this is the day before 21 22 Thanksqiving, so this is the last kind of -kind of day before the holidays and vacation 23 24 and things of that nature. So it is effectively the Friday of that week. 25

Page 330 WATERHOUSE - 10-19-21 1 2. So she is -- she is putting in all the payments for the week because we batch 3 payments weekly. And these are the payments 4 5 that go out that week, and she is informing me 6 of the payments and -- you know, again, at the bottom of the email, she is asking for my okay 7 to -- to release these payments in the wire 8 system. 9 So these would be accounts payable 10 of NexPoint? 11 I mean, it would be accounts payable 12 Α. 13 for all of these entities listed on this email. 14 Q. And who was Ms. Hendrix employed by 15 in November and December of 2020? Highland Capital Management. 16 Α. Okay. So -- so part of the services 17 Ο. that NexPoint had contracted with was for 18 Highland to ensure that NexPoint timely paid 19 20 its accounts payable; is that accurate? MR. MORRIS: Objection to the form 21 22 of the question. You have got to be 23 kidding me. 24 Is that accurate? Ο. 25 Α. Yes.

Page 331 WATERHOUSE - 10-19-21 1 Ο. And did NexPoint rely on employees of the debtor to ensure that NexPoint's 3 accounts payable were timely paid? 4 MR. MORRIS: Objection to the form 5 6 of the question. 7 Α. Yes. MR. RUKAVINA: Let's flip to the 8 next page, Mr. Nguyen, if you will please 9 scroll to the next page. 10 So this is an email similar to the 11 Ο. prior one, November 30th. 12 13 Do you see where it says, NPA HCMFA, USD \$325,000 one-day loan? 14 15 Do you see that, sir? I do. 16 Α. Do you have any memory of what that 17 Ο. 18 was? I don't recall what that -- what 19 Α. 20 that payment was for. Did it sometimes occur that one 21 Ο. advisor would, on very short-terms, make loans 22 to another advisor? 23 24 Α. Yes. This -- this -- this occurred from -- from -- from time to time. It actually 25

Page 332 WATERHOUSE - 10-19-21 1 looking at -- I'm -- I'm looking at the date of 2. this email. It is November 30th. It is the 3 last day of the month. 4 HCMFA has obligations it needs to 5 pay to its broker-dealer, which is HCFD. 6 it likely was short funds to make those 7 obligations under that -- under its agreement, 8 and so it provided a one-day loan because on 9 the next business day on 12/1 -- or the next 10 business day in December, it would receive 11 management fees from the underlying funds that 12 13 it managed and it would be able to pay back 14 that loan to NexPoint Advisors. 15 0. So -- so here Ms. Hendrix was 16 seeking your approval to transfer \$325,000 from NexPoint to HCMFA for a one-day loan; is that 17 18 correct? That is correct. 19 Α. 20 Let's flip to the next page, sir. Q. MR. RUKAVINA: And, Mr. Nguyen, if 21 22 you will please scroll down. 23 Ο. Now we have as an entry for 24 \$325,000, 11/30 loan payment. 25 Do you see that, sir?

Page 333 WATERHOUSE - 10-19-21 1 Α. Yes. And that is probably the loan that 3 Ο. was approved on the prior page? 4 5 Α. Yes, most likely. 6 Ο. So is it also true, sir, that in 7 addition to accounts payable debtor employees would be assisting NexPoint with respect to 8 paying back its debt? 9 10 MR. MORRIS: Objection to the form of the question. 11 I mean, yes, for loans of this 12 Α. 13 nature, yes. 14 Well, what about long term loans? Ο. 15 Was it reasonable for NexPoint to expect debtor employees to ensure that NexPoint timely paid 16 its obligations under long-term notes? 17 MR. MORRIS: Objection to the form 18 19 of the question. 20 MS. DANDENEAU: Objection to form. I mean, that is one of the things 21 Α. 22 that the Highland personnel did provide to the advisors. Yes, we would -- we would -- over 23 24 the years, yes, we -- we -- we did do that generally. Again, I don't remember 25

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1 WATERHOUSE - 10-19-21
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- 2 specifically but, yes, generally we -- you
- 3 know, we did do that.
- 4 Q. So do you recall -- and we can pull
- 5 it up, if need be -- that under the NexPoint
- 6 note that Mr. Morris asked you about earlier,
- 7 the one for more than \$30 million, that
- 8 NexPoint was obligated to make an annual
- 9 payment of principal and interest?
- 10 MR. MORRIS: Objection to the form
- of the question.
- 12 A. Yes, it was -- yes, it -- it was an
- 13 amortizing note. It was -- you know, from what
- 14 we reviewed earlier, it was payable by
- 15 December 31st of each year. So -- but are --
- 16 are you asking me --
- 17 Q. I'm just asking you, sir, if you
- 18 recall the note.
- 19 A. Yes, the \$30 million note, yes, we
- 20 reviewed it earlier, yes.
- Q. And do you recall Mr. Morris had you
- 22 go through the fact that NexPoint had made
- payments in years prior to 2020 on that note?
- 24 A. I do.
- Q. And do you believe that employees of

Page 335 WATERHOUSE - 10-19-21 1 the debtor would have played any role in NexPoint having made those prior payments? 3 MR. MORRIS: Objection to the form 4 of the question. 5 6 Α. Yes. 7 And what role in years prior to 2020 Ο. would employees of the debtor have had with 8 9 respect to NexPoint making that annual payment? We -- we -- we would have -- I keep 10 Α. saying "we." The team would have calculated 11 any amounts due under that loan and other 12 loans, as -- as standard course. 13 14 We would -- since we provided 15 treasury services to the advisors, we would inform the -- the -- we informed 16 Mr. Dondero of any cash obligations that are 17 forthcoming, whether we do cash projections. 18 If, you know, any of these payments 19 would have -- or, you know, the sum total of 20 all of these payments, including any note 21 22 payments, if there were any cash shortfalls, we would have informed Mr. Dondero of any cash 23 24 shortfalls. We could adequately plan, you know, in instances like that. 25

```
Page 336
                  WATERHOUSE - 10-19-21
 1
 2.
                Or, sorry, we -- I say "we" -- I
     keep saying "we" -- I keep wearing my -- again,
 3
     my -- my treasurer hat.
 4
 5
                But, yes, it is to -- it is to
 6
     inform Mr. Dondero of the obligations of the
 7
     advisors in terms of cash and obligations that
     are -- are upcoming and that -- and that are --
 8
     are scheduled to be paid.
 9
                And would those obligations that are
10
     upcoming and scheduled to be paid prior to 2020
11
     have incurred the annual payment on that
12
13
     NexPoint $30 million note?
14
                MS. DANDENEAU: Objection to form.
15
                MS. DEITSCH-PEREZ: Davor, I think
          you misspoke. You might want to just
16
          repeat the question.
17
18
          Q.
                Okay. Let me repeat the question,
     sir.
19
20
                Prior to 2020, those services that
     you just described, would that -- on behalf of
21
22
     the debtor, would that have included NexPoint's
     payments on the $30 million note?
23
24
          Α.
                Yes.
25
                So someone at the debtor in treasury
          Q.
```

```
WATERHOUSE - 10-19-21
 1
     or accounting would have sent some schedule or
     a reminder that a payment would be coming due
 3
                     Is that generally the practice?
 4
     in the future.
                Yes, we would -- you know, again, I
 5
 6
     didn't -- I didn't micromanage the teams, but
 7
     we had a -- a corporate accounting calendar
     that we use as kind of a tickler file to keep
 8
     track of payments.
 9
10
                I actually, you know, don't know how
     actively they're using that in -- in prior to
11
     2020, but it was actively used at some point.
12
13
                We did look at NexPoint cash
14
     periodically and cash for the other advisors as
15
     well and payments. You know, we -- payments
16
     like this would have appeared in our cash
     projections, in the advisor's cash projections.
17
                And, again, as like I said earlier,
18
     they would have appeared there, so there would
19
20
     be time to plan for making any of these
21
     payments.
22
                And based on your experience, would
     it have been reasonable for NexPoint to rely on
23
24
     the debtors' employees to inform NexPoint of an
     upcoming payment due on the $30 million
25
```

Page 338 WATERHOUSE - 10-19-21 1 promissory note? 3 MR. MORRIS: Objection to form of the question. 4 MS. DANDENEAU: Objection to form. 5 Yes. Yes, they did. I mean, but I 6 Α. 7 mean, but I don't think these -- these notes were any secret to anybody. 8 9 I understand, and I'm not suggesting Q. otherwise. 10 MR. RUKAVINA: Please pull up Alpha 11 2, Mr. Nguyen. 12 13 (Exhibit A2 marked.) 14 Q. Now, this document is similar to the ones we've seen before as of December 31, 2020, 15 16 and I don't see under NTA anything there for paying the promissory note to Highland. 17 Do you see anything like that? 18 19 Α. I do not. 20 MR. RUKAVINA: You can pull that -that exhibit down, Mr. Nguyen. 21 22 You are aware, of course, by now Ο. that, in fact, NexPoint failed to make the 23 24 payment due December 31, 2020, are you not? 25 I am aware, and yes, I do understand Α.

Page 339 WATERHOUSE - 10-19-21 1 it. 2. Were you aware that Highland 3 Ο. accelerated that \$30 million promissory note? 4 5 Α. I am aware. 6 Ο. Were you aware of that acceleration 7 at the time that it occurred? I don't remember specifically. 8 Α. Do you recall whether anyone asked 9 Q. you -- prior to the acceleration, anyone asked 10 you at Highland, what Highland should do with 11 respect to the missed payment? 12 13 Α. Did anyone ask me what Highland 14 should do about the missed payment? 15 Q. Yes, before acceleration. 16 MR. MORRIS: Objection to the form of the question. 17 I mean, what -- what I recall is 18 Α. there was the -- sorry, are you asking me --19 20 MS. DANDENEAU: Why don't you just repeat the question, Mr. Rukavina. 21 22 Let me try again, Mr. Waterhouse, Ο. 23 let me try again. 24 I am saying you're the CFO of someone, in this case, Highland, and the 25

- 1 WATERHOUSE 10-19-21
- 2 borrower failed to make the required payment.
- 3 Are you with me so far?
- 4 A. I am.
- 5 Q. Did anyone then ask you, what should
- 6 we do with respect to our rights against the
- 7 borrower that missed the payment?
- 8 A. Not that I recall.
- 9 Q. Did you play a role in the decision
- 10 to accelerate that \$30 million promissory note?
- 11 A. I did not.
- 12 Q. Do you recall whether Mr. Seery ever
- 13 asked you before the acceleration as to whether
- 14 he should accelerate the note?
- 15 A. I don't recall.
- 16 Q. And you don't recall when you
- 17 learned of the acceleration itself?
- 18 MR. MORRIS: Objection to the form
- 19 of that question.
- 20 A. It was -- it was sometime in
- 21 early -- in early 2021. I don't remember
- 22 specifically.
- Q. But do you recall whether it was
- 24 after the acceleration had already been
- 25 transmitted?

```
Page 341
                   WATERHOUSE - 10-19-21
 1
                 MS. DANDENEAU: Objection to the
          form of the question.
 3
          Α.
                 I don't recall.
 4
 5
                 Do you recall in early to mid
          Ο.
     January of 2021, after the default, discussing
 6
 7
     the default with Mr. Dondero?
          Α.
                 I do recall discussing with
 8
     Mr. Dondero after December 31, 2020?
 9
10
                 Yes, the fact of the default.
          Ο.
                 I don't recall.
11
          Α.
12
                MR. RUKAVINA: Let's pull up my
13
     Exhibit 6, Alpha 6.
                 (Exhibit A6 marked.)
14
15
                 MR. RUKAVINA: And, Mr. Nguyen, if
          you will please scroll down.
16
                 This email chain begins with you
17
          Ο.
     writing to Ms. Hendrix on January the 12th:
18
     NexPoint note to HCMLP.
19
20
                 Do you see that, sir?
21
          Α.
                 I do.
22
                 Were you discussing this same
          0.
     $30 million note we're talking about right now
23
24
     with Ms. Hendrix?
25
          Α.
                 Yes.
```

- 1 WATERHOUSE 10-19-21
- Q. Okay. Do you recall what prompted
- 3 you to send that email to her?
- 4 A. Yes, I had -- I had a conversation
- 5 with Jim.
- 6 Q. Okay. And what -- what did you
- 7 discuss with Jim that led to this email chain?
- 8 A. He -- he called me and he said he
- 9 wanted to make payment on the NexPoint note,
- 10 and I didn't -- I didn't know the -- the amount
- 11 offhand, so I reached out to Kristin and got
- 12 the details and relayed that to him.
- Q. And you see you sent that email to
- 14 her at 11:15 a.m. Does that help you remember
- when you had this discussion with Mr. Dondero?
- 16 In other words, was it that morning or the day
- 17 before, or can you -- can you --
- 18 A. No, it was -- it was that morning.
- 19 Q. And do you recall how you had that
- 20 conversation with him?
- 21 MR. MORRIS: Objection to the form
- of the question.
- Q. By telephone, by email, in-person?
- 24 A. Yeah, he -- he called me. I was at
- 25 home. We were working from home here in

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1 WATERHOUSE - 10-19-21
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- 2 December of 2020. He called me from home. He
- 3 said he was in court. He wanted to -- he asked
- 4 about, you know, making payment on the note and
- 5 the amount, and so I didn't have those numbers
- 6 in front of me, so I said I would get back to
- 7 him. I wanted all the details, so here is
- 8 this -- so I reached out to Kristin.
- 9 Q. And then she gave you that
- 10 \$1,406,000 figure?
- MR. RUKAVINA: Mr. Nguyen, if you
- 12 will scroll up, please.
- 13 A. Yes. Yeah, she -- the \$1,406,112.
- 14 Q. And do you recall whether you
- 15 conveyed that amount to Mr. Dondero?
- 16 A. Yes. I -- I called him back and
- 17 gave him -- gave him this amount.
- 18 Q. Are you aware of whether NexPoint,
- 19 in fact, then made that 1 million 406 and
- 20 change payment?
- 21 A. Yes, they did.
- Q. Did you discuss with Mr. Dondero at
- 23 that time, either the first conference or the
- 24 second conference that day -- strike that.
- When you conveyed the number to

Page 344 WATERHOUSE - 10-19-21 1 Mr. Dondero, was -- was it also on January 12th? 3 Sorry, when I conveyed the 4 Α. \$1.4 million number? 5 6 0. Yes. 7 Yes, yes, it was that -- it was --Α. So you had --8 Ο. 9 It was that point. Α. Well, to the best of your 10 0. recollection, you had a conference with 11 Mr. Dondero by the telephone in the morning, 12 13 and then another conference with him by 14 telephone after 11:40 a.m. that morning? 15 Α. Yeah, I can't remember -- yeah, it was either that morning or it could have been, 16 you know, early afternoon, but again, I 17 remember calling him back, relaying this 18 19 information to him, and he said, okay, pay --20 you know, make -- make this payment. And during either of those two 21 Ο. 22 calls, did you tell Mr. Dondero anything to the effect that making those -- I'm sorry, making 23 24 that payment would not de-accelerate the 25 promissory note?

```
Page 345
                   WATERHOUSE - 10-19-21
 1
          Α.
                 No.
                Did you tell him anything to the
 3
          Ο.
     effect that making that payment would not cure
 4
     the default?
 5
 6
          Α.
                No.
 7
                Did you discuss that in any way with
          Q.
     him?
 8
 9
          Α.
                No, I did not.
                Did he say why he wanted to have
10
          Ο.
     that $1.4 million payment made?
11
12
                MR. MORRIS: Objection to the form
          of the question.
13
14
          Α.
                He -- he -- he didn't go into
15
     specifics.
                Did he say anything to you to the
16
     effect that if NexPoint makes that payment,
17
     then the note will be de-accelerated?
18
19
                 MR. MORRIS: Objection to the form
20
          of the question.
                 I don't recall.
21
          Α.
22
                MR. RUKAVINA: You can put this one
23
          down, Mr. Nguyen.
24
                And, again, when you say you don't
          Ο.
     recall, you mean you don't remember right now
25
```

Page 346 WATERHOUSE - 10-19-21 1 either way; correct? Α. Yeah, I don't remember. I don't 3 remember us discussing that. 4 Now -- and we're almost done, I 5 0. 6 promise. I'm just going to -- I don't know how 7 to ask this question, so I'm just going to try to do my best. 8 9 Prior to the default on December 31, 2020, did Mr. Seery ever tell you any words to 10 the effect that you or someone at Highland 11 should ensure that NexPoint doesn't make its 12 13 payment? 14 Α. No. 15 0. Did you have any hint or any belief that anyone at NexPoint -- I'm sorry, strike 16 17 that. Did you have any reason to believe 18 19 that anyone with Highland was actively trying 20 to get NexPoint to make that default by not paying on December 31? 21 22 MR. MORRIS: Objection to the form 23 of the question. 24 Are you asking, did any Highland Α.

employees actively work to make -- to

25

Page 347 1 WATERHOUSE - 10-19-21 somehow --Let me take a step back. 3 Ο. Yes. Let me take a step back. 4 5 So you are aware now that as a 6 result of that default, what was still some 7 25-year note was accelerated and became immediately due. You are aware of that now; 8 9 right? 10 Α. Yes. And can you see how someone at 11 Ο. Highland might actually have been pleased with 12 13 that development? MR. MORRIS: Objection to the form. 14 15 0. Not that they were --- not that they 16 were pleased, but you can see how someone at Highland might have been pleased with that 17 development? 18 MR. MORRIS: Objection to the form 19 20 of the question. MS. DANDENEAU: Object to form. 21 22 I don't know how they would have Α. reacted to that. 23 24 Okay. But you're not -- you're not Ο. aware of any instructions or any actions being 25

Page 348 WATERHOUSE - 10-19-21 1 given or taken at Highland by Mr. Seery, the independent board, DSI, that -- that would have 3 basically led Highland to ensure that NexPoint 4 would fail to make that payment? 5 6 Α. I'm not aware. 7 In other words, there wasn't a trick Q. or a settlement; right? 8 9 MS. DEITSCH-PEREZ: Objection to 10 form. MS. DANDENEAU: Object to form. 11 MR. MORRIS: Object to form. 12 13 Α. I'm not aware. 14 Look, I'm not aware. I'm not in 15 every conversation. I mean, and I'm just -again, I'm sitting at home. It is the end of 16 17 the year. Again, I'm not aware. That is a perfectly legitimate 18 Ο. I don't know why -- why you think 19 20 otherwise. Okay. Just give me one second to 21 22 compose my thoughts. 23 MS. DEITSCH-PEREZ: While you're 24 taking your one second, why don't we take three minutes. I will be right back. 25

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Page 349
                  WATERHOUSE - 10-19-21
 1
                VIDEOGRAPHER: Do we want to go off
          the record?
 3
                MR. RUKAVINA:
 4
                              Yes.
                VIDEOGRAPHER: All right. We're
 5
 6
          going off the record at 6:27 p.m.
 7
          (Recess taken 6:27 p.m. to 6:30 p.m.)
                VIDEOGRAPHER: We are back on the
 8
 9
          record at 6:30 p.m.
                MR. HORN: Is Deb back?
10
                MS. DANDENEAU: Are you asking about
11
               I'm here.
12
          me?
13
                MR. HORN: Oh, okay. I don't see
14
          you, sorry.
15
                Actually, yeah, Mr. Waterhouse, so
          Q.
16
     when you had --
                MS. DANDENEAU: Are you asking about
17
          Deb Dandeneau or Deborah? I mean, there
18
19
          are a lot -- as we talked about, a lot of
                 I'm here.
20
          Debs.
21
                MS. DEITSCH-PEREZ: I'm here.
22
                MR. HORN: Yes, I was asking about
23
          DDP.
24
                MS. DEITSCH-PEREZ: Oh, DDP is here.
25
                MR. HORN: Okay. Here we go.
```

```
Page 350
                  WATERHOUSE - 10-19-21
 1
          going back on mute.
                MS. DANDENEAU: Get the right
 3
          nomenclature.
 4
                Mr. Waterhouse, on January 12th,
 5
          Ο.
 6
     2021, when you had those talks with Mr. Dondero
 7
     about the $1.4 million payment, did you have a
     communication or a conversation with Mr. Seery
 8
     about that payment after January 12th, 2021?
 9
10
          Α.
                I don't recall.
                Well, in response to Mr. Dondero
11
          Ο.
     reaching out to you, do you recall on that day,
12
13
     January 12th, talking to Mr. Seery or anyone at
14
     Highland other than the email chain we just saw
15
     about Mr. Dondero's call with you?
16
          Α.
                Did I talk to -- I spoke with
     Kristin -- I don't know if I spoke to her.
17
     likely spoke to Kristin Hendrix because we had
18
19
     to get the wire on NexPoint's behalf to make
20
     the payment to Highland.
                So it is true, then, that -- that
21
          Ο.
22
     employees of the debtor did actually cause that
     payment to be made when it was made after
23
24
     January 12th?
25
          Α.
                Yes, I mean, we -- we -- as I
```

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1 WATERHOUSE - 10-19-21
```

- 2 testified earlier, we provided that accounting
- 3 finance treasury function as -- under the
- 4 shared services agreement. And so once I
- 5 got the -- I talked to Jim, got the approval to
- 6 make this payment, we have to then make the
- 7 payment, or the team does, and so the payment
- 8 was made.
- 9 Q. Okay. But -- okay. And -- and
- 10 sitting here right now, after Jim called you,
- 11 you don't remember talking to anyone other than
- 12 the -- the couple of people you mentioned,
- 13 talking to anyone about something to the effect
- 14 that, hey, Jim wants to make this payment now?
- MR. MORRIS: Objection to the form
- of the question.
- 17 A. I don't -- I don't recall.
- 18 Q. And does that include legal counsel?
- 19 Without going into any detail, on
- 20 January 12th or before that payment was made,
- 21 did you consult with legal counsel about
- 22 anything having to do with the \$1.4 million
- 23 payment?
- 24 A. I don't recall.
- Q. Okay. Thank you, sir, for your

```
Page 352
 1
                  WATERHOUSE - 10-19-21
 2.
     time.
 3
                MR. RUKAVINA: Pass the witness.
                MR. MORRIS: I just have a few
 4
 5
          questions, if I may.
 6
                MS. DEITSCH-PEREZ: Don't you go at
 7
          the end?
                MR. MORRIS: Oh, I apologize. He is
 8
 9
          your witness. I'm surprised you want to
10
          ask him questions, but go right ahead.
                MS. DEITSCH-PEREZ: Just have a
11
          couple of things.
12
13
                MR. RUKAVINA: And I will just
14
          object to that, that he's our witness.
15
          That's not --
16
                MR. MORRIS: I'm not talking to you.
17
          I'm not talking to you.
                MS. DANDENEAU: Also, Mr. Morris, it
18
          is -- it is --
19
20
                MS. DEITSCH-PEREZ: He is not my
          witness. He's been subpoenaed by you.
21
22
          Okay?
23
                That is no offense, Mr. Waterhouse,
24
          I'm -- I'm not -- okay. Anyway.
25
                        EXAMINATION
```

Page 353 WATERHOUSE - 10-19-21 1 BY MS. DEITSCH-PEREZ: Good evening. I'm very sorry to be 3 Ο. going last and I know you have had a long and 4 taxing day, so I thank you for indulging me. 5 The kinds of services that you 6 7 describe that the -- that Highland provided for NexPoint, did Highland also provide similar 8 9 services to that to HCRE and HCMS? 10 Α. Yes. MR. MORRIS: Objection to the form 11 of the question. 12 13 Ο. What kind of services did Highland 14 provide to HCRE and HCMS? MR. MORRIS: Objection to the form 15 of the question. 16 MS. DEITSCH-PEREZ: What is your 17 18 objection, John? 19 MR. MORRIS: It is vaque and 20 ambiguous. Unlike the advisors and NexPoint, they actually had shared services 21 22 agreements. 23 MS. DEITSCH-PEREZ: I got -- I 24 understand your objection. That is fine. Let's take them one at a time. 25 Q.

Page 354 WATERHOUSE - 10-19-21 1 What kinds of services did Highland 2. provide to HCRE? 3 MR. MORRIS: Objection to the form 4 5 of the question. 6 Α. HCMS, Highland employees provided 7 accounting services, treasury management services, potentially legal services. 8 don't -- but I wouldn't have been directly 9 involved in that. But as far as the teams that 10 I manage, it was accounting, treasury, things 11 of that nature. 12 13 Ο. Okay. And that was for HCM, LLP --And -- and, sorry, it would also be 14 Α. 15 any asset valuation if needed as well. Okay. We went back and forth on 16 Ο. each other and I apologize, so just to clarify. 17 You were talking about the services 18 that Highland Capital Management provided to 19 20 HCMS; is that right? HCMS. So, again, yes. 21 Α. And accounting, treasury, valuation, and also tax 22 services too. 23 24 Ο. Okay. 25 Tax services. Look, I'm expanding Α.

```
Page 355
                   WATERHOUSE - 10-19-21
 1
     this, their HR services as well.
          Ο.
                Okay. And did that include bill
 3
     paying?
 4
 5
                MR. MORRIS: Objection to the form
 6
          of the question.
 7
                Did the services that HCM provided
     to HCMS include bill paying?
 8
                MR. MORRIS: Objection to the form
 9
          of the question.
10
          Α.
                 Yes.
11
                And did the services that HCMLP
12
          Ο.
13
     provided to HCMS include scheduling upcoming
14
     bills?
15
                MR. MORRIS: Objection to the form
          of the question.
16
17
          Α.
                 Yes.
                And did HCMLP regularly pay -- cause
18
          Q.
     to be paid the payments on loans HCMS had from
19
20
     HCMLP?
                MR. MORRIS: Objection to the form
21
          of the question.
22
          Α.
23
                Yes.
24
          Ο.
                 Typically -- if there is a
     typically, how far in advance of due dates did
25
```

Page 356 WATERHOUSE - 10-19-21 1 2. HCMLP cause HCMS to pay its bills? MR. MORRIS: Objection to the form 3 of the question. 4 5 I mean, it -- it -- it depend -- it Α. 6 depended on the nature of the payment and the 7 vendor, but, you know, if there were -- if there were larger scheduled payments, you know, 8 I would like to give at least 30 days notice. 9 And that is -- that is kind of my 10 rule of thumb so no one is surprised. 11 Okay. And was it generally HCMLP's 12 Q. 13 practice to timely pay HCMS' bills? 14 MR. MORRIS: Objection to the form 15 of the question. It -- it -- it -- that depended on 16 Α. the nature of the payment. 17 Okay. And can you explain what you 18 Ο. mean by that? 19 20 Α. Yeah, I mean if -- if it was -- I mean -- if there was some professional fees 21 22 that weren't -- you know, they were due but they weren't urgent, those fees may not be paid 23 24 as timely as others that have a due date or -or things like that. 25

Page 357 WATERHOUSE - 10-19-21 1 Okay. Are loan payments the kinds Ο. of thing that HCMLP would pay on time because 3 of potential consequences of not paying on 4 time? 5 6 MR. MORRIS: Objection to the form 7 of the question. Yes. As I testified earlier, we 8 Α. would want to give, you know, notice on -- on 9 -- on larger payments and -- and things of that 10 nature so we didn't miss due dates. 11 Okay. And over the course of time, 12 Q. did HCMLP generally pay HCMS' loan payments in 13 14 a timely fashion? MR. MORRIS: Objection to the form 15 of the question. 16 I can't remember specifically, but 17 Α. 18 generally, yes. Okay. Now, did HCMLP provide 19 Ο. 20 similar services to HCRE that you have described it provided to HCMS? 21 22 MR. MORRIS: Objection to the form of the question. 23 24 Yes, but I don't think it -- it Α. provided -- I don't think it provided HR 25

Page 358 WATERHOUSE - 10-19-21 1 services. Can you describe the accounting and 3 Ο. treasury services that HCMLP provided for HCRE? 4 Yeah, it -- it would provide 5 Α. 6 bookkeeping services on a -- on a periodic 7 It would make payments, you know, as basis. needed. 8 Okay. So did it provide --9 Q. And -- and I believe it -- it -- it 10 Α. provided tax services as well. 11 Okay. And so did it provide the 12 Q. 13 same kind of bill -- did HCMLP provide the same 14 kind of bill-paying services for HCRE that it 15 provided for HCMS and NexPoint? 16 MR. MORRIS: Objection to the form of the question. 17 18 Α. Yes. 19 And over the course of time, did 0. 20 HCMLP generally cause to be made the loan payments that HCRE owed to HCMLP? 21 22 MR. MORRIS: Objection to the form of the question. 23 24 Α. Yes. Did HCMLP make loan payment -- the 25 Q.

- 1 WATERHOUSE 10-19-21
- 2 loan payment that was due from HCMS to HCMLP in
- 3 December of 2020?
- 4 MR. MORRIS: Objection to the form
- 5 of the question.
- 6 A. I don't believe that payment --
- 7 payment was made.
- 8 Q. Okay. And when HCMLP caused HCMS in
- 9 the past to make loan payments, whose money did
- 10 it use to make those payments?
- 11 MR. MORRIS: Objection to the form
- of the question.
- 13 A. It was the -- the money in HCMS's
- 14 operating account would be made to that --
- 15 those moneys would be used to make payment to
- 16 Highland Capital Management.
- 17 Q. Okay. And Highland -- is it correct
- 18 that Highland Capital Management personnel had
- 19 the access to HCMS's accounts to be able to
- 20 cause such payments to be made?
- 21 A. Yes, Highland personnel had access
- 22 to those accounts.
- 23 Q. Okay. And so now for HCRE, whose
- 24 money was used when HCMLP caused HCRE
- 25 payments -- loan payments to Highland to be

Page 360 WATERHOUSE - 10-19-21 1 2. made? MR. MORRIS: Objection to the form 3 of the question. 4 It was -- it was cash in HCRE's bank 5 Α. 6 account that would be used to make payments to 7 Highland Capital Management. Okay. And so did Highland Capital 8 Ο. Management have access to HCRE's funds in order 9 to be able to make such payments? 10 MR. MORRIS: Objection to the form 11 of the question. 12 13 Α. Personnel at Highland Capital 14 Management had access to HCRE's bank account to 15 effectuate the payments. Okay. And was the payment due from 16 Ο. HCRE to HCMLP due in December of 2020 made? 17 18 Α. It --19 In December of 2020. Ο. 20 Α. It was not. Okay. And was there money in HCRE's 21 Q. account that would have enabled the payment to 22 be made had HCM personnel attempted to make the 23 24 payment? 25 MR. MORRIS: Objection to the form

Page 361 WATERHOUSE - 10-19-21 1 of the question. Α. I -- I don't recall. 3 Do you have any reason to believe 4 Ο. that either HCRE or HCMS simply didn't have the 5 6 funds on hand to make the December 2020 7 payments? Α. I don't know. 8 I quess I'm asking, do you have any 9 Q. reason to believe that they didn't have the 10 funds? 11 We managed cash for so many 12 Α. 13 different entities and funds, and I don't 14 recall, you know, where the cash position was 15 for HCRE and HCMS at 12/31/2020. 16 Ο. Okay. I just don't recall, and I don't --17 Α. and I don't remember what the loan payment 18 19 obligations were from HCRE to Highland, and 20 from HCMS to Highland. I don't recall. don't recall, I mean... 21 22 Let me come at it a different way. Ο. Were the -- were the payments that would 23 24 otherwise have been due in December of 2020 made in January of 2021 for HCMS and HCRE? 25

- 1 WATERHOUSE 10-19-21
- 2 A. I believe the HCRE payment was made
- 3 in January of 2021. I don't recall any
- 4 payments being made from HCMS to Highland.
- 5 Q. If it -- how is it the HCRE payment
- 6 came to be made? Why did you make it -- why
- 7 did HCM make the payment in January of 2021?
- 8 A. Jim -- Jim called me and instructed
- 9 me to -- to make the payment on behalf of HCRE,
- 10 Jim Dondero -- Jim Dondero.
- 11 Q. Did he seem upset that -- that the
- 12 payment had not been made?
- 13 A. Yeah. On the note that was, you
- 14 know, that was the term note, yes, he -- he was
- 15 displeased that the -- that the payment had not
- 16 been made by year-end.
- 17 Q. Okay. And did you make the -- cause
- 18 the payment to be made as -- as requested?
- 19 A. Yes.
- 20 Q. And did anyone else from HCM
- 21 participate with you in causing the payment to
- 22 be made to -- on the HCRE loan?
- 23 A. Yes. It would have been Kristin
- 24 Hendrix. I -- again, I don't -- as I testified
- 25 earlier, I'm not an officer of HCRE. I don't

- 1 WATERHOUSE 10-19-21
- 2 believe I'm an authorized signer. So I
- 3 can't -- other personnel have to make payment
- 4 from HCRE to -- to -- to Highland.
- 5 Q. Okay. And in the conversation
- 6 that -- that you had with Mr. Dondero when he
- 7 requested the payment to be made, did you say
- 8 to him words to the effect, Jim, this loan is
- 9 going to stay in default, what are you making
- 10 the payment for, anything like that?
- 11 A. No.
- 12 Q. In fact, did you have the impression
- 13 from him that he thought that the loan would
- 14 be -- the default would be cured by making the
- 15 payment?
- MR. MORRIS: Objection to the form
- of the question.
- 18 A. Did I get the impression from Jim
- 19 Dondero that the loan would be cured if the
- 20 payment from HCRE --
- 21 Q. Yeah, if that is what he thought.
- MR. MORRIS: Objection to the form
- of the question.
- 24 A. I didn't get any impression from him
- 25 on that at the time.

Page 364 WATERHOUSE - 10-19-21 1 Ο. Do you know whether there was an HCMS term loan that had a payment due in 3 December of 2020? 4 I don't recall. 5 Α. 6 Ο. Okay. And so the reason you don't 7 recall whether or not there was a payment in January of 2021 is because you just don't 8 9 remember whether there was such a loan at all? 10 MR. MORRIS: Objection to the form of the question. 11 I don't remember. There is -- there 12 Α. is so many notes, and I mean, demands, and I 13 don't -- I don't remember. It's a lot to keep 14 15 track in your head. I understand, and -- and I hear your 16 Ο. frustration when you have explained that the 17 debtor has your documents and you don't, and so 18 I fully appreciate it, and this is no knock on 19 20 It's a knock on somebody else on this you. call. 21 MR. MORRIS: I move to strike. 22 That was pretty obnoxious, but go ahead. 23 24 Okay. But so, Mr. Waterhouse, if --Ο. 25 if a payment on the HCMS loan was made in

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1 WATERHOUSE - 10-19-21
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- 2 January of 2021, do you think it was part of
- 3 the same conversation where Jim Dondero said,
- 4 hey, why didn't that get paid, please make
- 5 that -- get that payment done?
- 6 MR. MORRIS: I object to the form of
- 7 the question.
- 8 A. Yes. Likely it would have been -- I
- 9 mean, again, I don't recall a payment being
- 10 made, but, you know, again, I don't remember
- 11 everything.
- 12 Q. Okay. Did -- at the time you were
- 13 communicating with Kristin Hendrix about the
- 14 payment being made, whichever payments were
- 15 made in January, did she say anything to you
- 16 about the payments not curing the loan
- 17 defaults?
- 18 A. No.
- 19 Q. Okay. All right. So I'm going to
- 20 take you back to very early in the deposition
- 21 when Mr. Morris was asking you about the --
- 22 the -- the -- the agreement with respect to
- 23 the -- the forgiveness element of the loans, so
- 24 that is just to orient you.
- Do you remember that there was a

Page 366 WATERHOUSE - 10-19-21 1 time that you and Mr. Dondero were 2. communicating about potential means of 3 resolving the Highland bankruptcy by what was 4 colloquially referred to as a pot plan? 5 6 Α. Yes. 7 Okay. And can you tell me generally Q. when that was? 8 Like mid -- mid 2020, sometime in 9 Α. 2020, mid 2020. 10 Okay. And did the process of trying 11 to figure out what the numbers should be 12 13 involve looking at what one should pay for the Highland assets? 14 15 MR. MORRIS: Objection to the form of the question. 16 Yes. 17 Α. Okay. And did there come a time 18 Ο. 19 when you were proposing some potential numbers 20 and Mr. Dondero said something to you like, well, why are you including payment for the 21 22 related party notes, those, you know, were likely to be forgiven as part of my deferred 23 24 executive compensation? 25 MR. MORRIS: Objection to the form

Page 367 WATERHOUSE - 10-19-21 1 of the question. Α. Yes, we did have that conversation. 3 Okay. Was that conversation in 4 Ο. connection with trying to figure out the right 5 6 numbers for a pot plan? 7 I mean, it was -- it was -- I Α. Yeah. mean, Jim -- Jim would ask for, you know, 8 9 most -- most recent asset values, you know, for Highland, and -- and myself and the team 10 provided those to him, so it was in that 11 12 context. Okay. And does that refresh your 13 Ο. 14 recollection that these communications were in 15 2020 rather than 2021? 16 MR. MORRIS: Objection to the form of the question. 17 The -- the -- the executive 18 Α. compensation discussions were definitely in 19 2020. 20 Okay. Now, did you ever make 21 Ο. proposals that took into account Jim's comment 22 that the notes were likely to end up forgiven 23 24 as part of his compensation? 25 MR. MORRIS: Objection to the form

Page 368 WATERHOUSE - 10-19-21 1 of the question. Yes, we -- the team and myself put 3 Α. together, you know, asset summaries of Highland 4 at various times for all the assets of 5 6 Highland, and not including the notes. 7 Okay. And were those presentations communicated to -- to Mr. Seery? 8 Well, look, I didn't tell -- I 9 Α. No. didn't tell Mr. Seery. I don't know what 10 Mr. Dondero did with the information. 11 12 Q. Okay. 13 Α. I did not have conversations with 14 Mr. Seery. 15 Okay. Do you know who saw the Ο. presentations that you put together that didn't 16 include the value of the related party notes? 17 We're talking presentations -- these 18 Α. 19 are -- these are Excel spreadsheets? 20 Q. Uh-huh. I don't know who -- these were given 21 Α. to -- to Jim Dondero. I don't know what was 22 done with them after that. 23 24 Okay. You also mentioned earlier Ο. that sometime during your tenure at Highland 25

Page 369 WATERHOUSE - 10-19-21 1 you knew of the practice of giving forgivable loans to executives. 3 MR. MORRIS: Objection to the form 4 5 of the question. 6 Ο. Can you -- can you tell me what you 7 recall about that practice? MR. MORRIS: Objection to the form 8 of the question. 9 Yes, so there were -- there were --10 during my tenure at Highland, there were loans 11 or -- given to employees that were later 12 forgiven at a future date and time. 13 14 Ο. Okay. And when the loans were 15 given, did the notes, to your recollection, say anything about the potential forgiveness term? 16 MR. MORRIS: Objection to the form 17 18 of the question. 19 When you say "did the notes," did Α. 20 the promissory notes detail the forgiveness? 21 0. Yes. 22 Not that I recall. Α. And until such time as whatever was 23 Ο. to trigger the forgiveness occurred, were the 24 notes bona fide notes as far as you were 25

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 1
                  WATERHOUSE - 10-19-21
 2.
     concerned?
                MR. MORRIS: Objection to the form
 3
          of the question.
 4
 5
          Α.
                Yes, similar to -- yes.
 6
          Ο.
                Okay. You were going to say similar
 7
     to what?
                Mr. Morris earlier today showed
 8
          Α.
     notes of the financial statements about various
 9
     affiliate loans. I -- I -- I do recall these
10
     notes because I -- at that time personally
11
     worked on the -- the financial statements of
12
13
     Highland. That was, you know, in my role as a
14
     corporate accountant.
15
                And there were -- those loans
16
     were -- to the partners were detailed in the
     notes to the financial statements, similar to
17
     what we went through earlier today in the prior
18
19
     testimony about what we saw with Highland
20
     and -- and -- and the -- and HCMFA.
                Is it fair to say that on Highland's
21
          Ο.
22
     balance sheet there were any number of assets
     that the value of which could be affected by
23
24
     subsequent events?
25
                MR. MORRIS: Objection to the form
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Page 371 WATERHOUSE - 10-19-21 1 of the question. Yes. I mean, yes, that -- there 3 Α. are. And that is -- yes. 4 Okay. And is it typical accounting 5 0. 6 practice that until there is some certainty about those potential future events, that asset 7 value listed on -- on the books doesn't take 8 into account those potential future events? 9 10 MR. MORRIS: Objection to the form of the question. 11 Yeah, if those -- yes. If -- if 12 Α. 13 those future events, you know, at the time of 14 issuance are not known or knowable, like I 15 discussed earlier with, like, market practice, asset dislocation, or, you know, I mean, things 16 like that, you -- I mean, it -- it could affect 17 its fair value --18 19 Ο. Okay. 20 Α. -- in the future. And am I correct you wouldn't feel 21 Ο. compelled to footnote in every possible change 22 in -- in an asset when those possibilities are 23 24 still remote? 25 MR. MORRIS: Objection to the form

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Page 372
                  WATERHOUSE - 10-19-21
 1
          of the question.
                The accounting standard is you have
 3
          Α.
     to estimate to the best -- you know, to -- to
 4
     the best of your ability, the fair value of an
 5
 6
     asset as of the balance sheet date under --
 7
     under GAAP.
                Did -- strike that.
 8
          Ο.
                Okay. Give me a minute. I'm
 9
     close -- I'm close to done. Let me just go off
10
     and look at my notes for a second. So take two
11
     minutes.
12
                               We're going off the
13
                VIDEOGRAPHER:
14
          record at 7:02 p.m.
15
          (Recess taken 7:02 p.m. to 7:03 p.m.)
                VIDEOGRAPHER: We are back on the
16
          record at 7:03 p.m.
17
                Mr. Waterhouse, is it generally your
18
          Ο.
     understanding that people you work with now
19
20
     have been asking the debtor for full and
     unfetterred access to their own former files?
21
22
                MR. MORRIS: Objection to the form
          of the question.
23
24
                Yes, I am -- I am generally aware.
          Α.
25
                Okay. And do you think you could
          Q.
```

Page 373 WATERHOUSE - 10-19-21 1 have been better prepared for this deposition if the debtor had complied with those requests? 3 MR. MORRIS: Objection to the form 4 5 of the question. 6 Α. I -- I -- I most certainly -- yes. 7 I mean, again, these are multiple years, multiple years ago, lots and lots of 8 9 transactions. You know, we asked about NAV errors 10 and, you know, things like that and these 11 are -- it would make this process a lot more --12 13 a lot easier and if we had -- if we had access 14 to that. 15 0. And has the debtor -- is the Okay. debtor suing you right now? 16 17 Α. Yes. And is the debtor trying to renege 18 Q. on deals that it had previously made with you? 19 20 MR. MORRIS: Objection to the form of the question. 21 22 Sorry, I need to -- it is my Α. understanding that the litigation trust is 23 24 suing me. And not being a lawyer, I don't know -- is that the debtor? 25

Page 374 WATERHOUSE - 10-19-21 1 Is that -- I don't know the 2. relationship. So, again, I'm not the lawyers. 3 I've said many times. But my understanding is 4 the litigation trust is suing me. I could be 5 6 wrong there. I don't know. 7 Okay. I understand. Ο. Someone with some connection to the 8 Highland debtor has brought a claim against 9 you; is that fair? 10 MR. MORRIS: Objection to the form 11 of the question. 12 13 Α. Yes. 14 Okay. And is there also some motion Ο. 15 practice in the bankruptcy where the debtor or someone associated with the debtor is 16 attempting to undo something that was 17 previously resolved with you? 18 19 Α. Yes. 20 And so in one action somebody is Ο. associated with the debtors trying to --21 22 threatening you with trying to take money from you, and then in the other -- and trying to --23 and in the other they are threatening not to 24 pay you things that had previously been agreed; 25

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Page 375
                  WATERHOUSE - 10-19-21
 1
     is that correct?
 2.
                MR. MORRIS: Objection to the form
 3
          of the question.
 4
 5
          Α.
                I want to be -- yes, I -- there
 6
     is -- I'm being sued, again, on -- on something
     that was agreed to with Mr. Seery and myself.
 7
     I don't -- I don't -- I don't own that claim.
 8
 9
          Q.
                Okay.
                To be transparent, I don't own that
10
          Α.
             So it is not my personal property.
11
12
          Q.
                Okay.
13
          Α.
                And -- and being the nonlawyer, I
14
     don't know how I can get sued for something
15
     that I don't owe or, like, I don't own
     anything. I'm not the lawyer. But, I mean, if
16
     that is -- if I'm understanding the facts
17
18
     correctly.
19
                Okay. And the lawsuit that was
          Ο.
20
     filed that names you, that was just filed
     this -- this past week; is that right?
21
22
                MS. DANDENEAU: Ms. Deitsch-Perez, I
23
          do want to interrupt at this point because
24
          just as I told Mr. Morris, that this is a
          deposition about the noticed litigation.
25
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Page 376
                  WATERHOUSE - 10-19-21
 1
                I really don't want to go -- go
          afield --
 3
                MS. DEITSCH-PEREZ: Yeah.
 4
 5
                MS. DANDENEAU: -- and open up a
 6
          whole new line of inquiry about the lawsuit
 7
          or the -- the motion and the bankruptcy
          court. We will be here all night.
 8
 9
                MS. DEITSCH-PEREZ:
                                     And I
          understand.
10
                My -- my point is: Do you feel
11
          Ο.
     like -- like there is some effort by these
12
13
     parties related to the debtor to intimidate
14
     you -- not that you -- I'm not saying you are
15
     or you aren't.
                But do you feel like there is some
16
     effort to intimidate you and maybe an effort to
17
     deter you from being as prepared as you might
18
     be in this deposition?
19
20
                MR. MORRIS: Objection to the form
21
          of the question.
22
                I was -- I was surprised by the
          Α.
     lawsuit, by me being named, because, again, I
23
24
     don't own the asset and things like that.
25
     Yeah, I just -- I want to move forward with my
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Page 377
                   WATERHOUSE - 10-19-21
 1
     life at Skyview.
                MS. DEITSCH-PEREZ:
                                      Thank you.
 3
                 THE WITNESS:
                               Thank you.
 4
 5
                    FURTHER EXAMINATION
 6
     BY MR. MORRIS:
                 If I may, I just have a few
 7
          Q.
     questions.
 8
 9
                Mr. Waterhouse, we saw a number of
     documents that Mr. Rukavina put up on the
10
     screen where Ms. Hendrix would send you a
11
     schedule of payments that were due on behalf of
12
13
     certain Highland affiliates.
14
                Do you remember that?
15
          Α.
                Yes.
                And in each instance she asked for
16
          Ο.
     your approval to make the payments; is that
17
     right?
18
                 Yes, she did.
19
          Α.
                And was that the -- was that the
20
          Ο.
     practice in the second half of 2020 whereby
21
     Ms. Hendrix would prepare a list of payments
22
     that were due on behalf of Highland associates
23
24
     and ask for approval?
25
          Α.
                 Yes.
```

Page 378 WATERHOUSE - 10-19-21 1 Ο. And I think you said that there was 3 a -- a --It was -- I think I testified to 4 Α. 5 this earlier when we talked about procedures 6 and policy, you know, again, I want to be 7 informed of -- of -- of -- of any payments that are going out. I want to be made 8 aware of these payments, and that was just a 9 general policy, not just for 2020. 10 Okay. So it went beyond 2020? 11 Q. 12 Α. Yes. 13 Q. Is that right? 14 Α. Yes. 15 Okay. And the corporate accounting Q. group would prepare a calendar that would set 16 forth all of the payments that were anticipated 17 in the -- in the three weeks ahead; is that 18 19 right? 20 Α. I -- like I testified earlier, we 21 had a corporate calendar that was set up, you 22 know, to -- to provide reminders or, you know, of anything of any nature, whether it is 23 24 payments or -- or financial statements or, you know, whatever it is, you know, to meet 25

Page 379 WATERHOUSE - 10-19-21 1 2. deadlines. I don't know how, as I testified 3 earlier, how much they were using that 4 calendar. 5 Okay. But -- but you did get notice 6 Ο. 7 and a request to approve the payments that were coming due on behalf of Highland's affiliates. 8 Do I have that right? 9 10 MS. DANDENEAU: Objection to form. I mean, generally, yes. I mean, you 11 Α. know, as we saw with these emails, generally, I 12 13 mean, did that encompass everything, no. 14 Okay. Do you know why the Ο. 15 payment -- do you know why there was no payment made by NexPoint at the end of 2020? 16 There was -- there was -- we 17 Α. 18 talked about these agreements between the 19 advisors and Highland, the shared services and 20 the cost reimbursement agreement. And in late 2020, there were 21 22 overpayments, large overpayments that had been made over the years on these agreements, and it 23 24 was my understanding that the advisors were --

were talking with -- like Jim Seery and others

25

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1 WATERHOUSE - 10-19-21

- 2 to offset any obligations that the advisors
- 3 owed to Highland as offset to the overpayments
- 4 on these agreements.
- 5 Q. Okay. Did you participate in any of
- 6 those conversations?
- 7 A. I did not.
- 8 Q. Okay. Do you know -- do you recall
- 9 that the -- at the end of November, the debtor
- 10 did notice to the advisors of their intent to
- 11 terminate the shared services agreements?
- 12 A. Like I testified earlier, there
- 13 was -- the agreements weren't identical, from
- 14 what I recall, and there is one that had a
- 15 longer notice period, which I think had a
- 16 60-day notice period. I don't recall which one
- 17 that was, so not all of them were -- notice
- 18 hadn't been given as of November 30th, for all
- 19 of the agreements.
- 20 Q. Upon the receipt of the -- the
- 21 termination notices that you recall, do you
- 22 know if the advisors decided at that point not
- 23 to make any further payments of any kind to
- 24 Highland?
- MR. RUKAVINA: Objection, form.

Case 3:21-cv-00881-X Docume Exhibitato Pitage 0430 90/2446 Page 266 of 282 Page ID 47189 Page 381 WATERHOUSE - 10-19-21 1 The advisors -- the advisors Α. No. had stopped making payments prior to that 3 notice. 4 Okay. And how do you know that the 5 Ο. 6 advisors stopped making -- making payments 7 prior to the notice? I had -- I had a conversation 8 with -- with Jim Dondero. 9 And did Mr. Dondero tell you that 10 the advisors would no longer make payments to 11 Highland? 12 13 MS. DEITSCH-PEREZ: Object to the 14 form. 15 Α. Yes, he -- he -- again, he said they -- they -- the advisors have overpaid on 16 17 these agreements, to not make any future payments, and that there needs to be offsets, 18 19 and they're working on getting offsets to these 20 overpayment. Do you know if anybody ever 21 Ο. 22 instructed Highland's employees to make the

Did anyone instruct Highland's 25 Α.

23

24

the year?

payment that was due by NexPoint at the end of

Page 382 WATERHOUSE - 10-19-21 1 employees to make that payment? Correct. 3 Q. Anyone -- not that I'm aware. Α. 4 5 Were any of Highland's employees Ο. 6 authorized to make the payments on behalf of 7 its affiliates -- withdrawn. Was any of Highland's employees 8 authorized to effectuate the payment on behalf 9 of NexPoint that was due at the end of the year 10 without getting approval from either you or 11 Mr. Dondero? 12 13 Α. They had the -- they had the ability 14 to make the payment, but they didn't -- you 15 know, that -- that payment needed to be 16 approved. Okay. And it needed to be approved 17 18 by you or Mr. Dondero; is that right? 19 I mean, I'm not going to make the Α. 20 unilateral decision. Is that a decision that you 21 Ο. 22 understood had to be made by Mr. Dondero? Yes. Sitting back in December of 23 Α. 24 2020, the -- that -- there was this off --25 offset negotiation that -- that was happening,

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1 WATERHOUSE - 10-19-21
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- 2 so I mean, until those negotiations were
- 3 resolved, you know, there wasn't any
- 4 payments -- there weren't any payments.
- 5 Q. And -- and there were no payments
- 6 until the negotiations were resolved because
- 7 that was the directive that you received from
- 8 Mr. Dondero; correct?
- 9 A. I don't think he said -- I mean, I
- 10 think -- yeah, I mean -- I'm trying to recall
- 11 the conversation. It was -- you know, there
- 12 is -- there is these negotiations. There's --
- there needs to be these offsets. They're
- 14 talking with the debtor. So, you know, until
- 15 this is resolved, right, I mean, depending on
- 16 how, whatever that resolution was, were we to
- 17 take any action.
- 18 Q. Okay. How about with respect to
- 19 HCMS, did HCMS have a term payment due at the
- 20 end of the year?
- 21 A. Again, I don't -- I don't recall.
- Q. Okay. You discussed briefly two
- 23 payments that were made in January of 2021, one
- on behalf of NexPoint, and one on behalf of
- 25 HCMS. Do I have that right?

Page 384 WATERHOUSE - 10-19-21 1 Α. The two payments I recall were NexPoint and HCRE. 3 Okay. And those two payments --4 thank you for the correction. And those two 5 6 payments were made because Mr. Dondero 7 authorized those payments to be made; correct? Α. 8 Yes. And they hadn't been made before 9 Q. that because Mr. Dondero had not authorized 10 them to be made? 11 12 MS. DEITSCH-PEREZ: Object to the 13 form. Yes, because of these negotiations. 14 Α. 15 Okay. Just a couple of more Q. 16 questions. Did anybody, to the best of your 17 knowledge, on behalf of HCMFA, ever tell the 18 19 SEC that HCMLP was responsible for the mistakes 20 that were made on the TerreStar valuation? Did anyone from Highland on HCMFA's 21 Α. 22 behalf tell the SEC that Highland -- that Highland was responsible for there -- I just 23 24 want to make sure --25 It was a little bit different, so Q.

Page 385 WATERHOUSE - 10-19-21 1 let me try again. Α. These are very long questions, John. 3 I'm not trying to be --4 That is good. Do you know whether 5 Ο. 6 anybody -- do you know whether anybody on 7 behalf of HCMS -- HCMFA ever told the SEC that Highland was the responsible party for the 8 TerreStar valuation error? 9 10 Α. Not that I'm aware. Okay. Did anybody on behalf of 11 Ο. the -- on behalf of HCMFA ever tell the retail 12 13 board that Highland was responsible for the 14 TerreStar valuation error? Not that I'm aware. 15 Α. Do you know if HCMFA made an 16 Ο. insurance claim with respect to the damages 17 that were incurred in relation to the TerreStar 18 valuation error? 19 20 Α. Yes. And do you know why they made that 21 Ο. insurance claim? 22 23 Α. Because there was an error. 24 mean --Was the insured's claim made -- was 25 Q.

Page 386 WATERHOUSE - 10-19-21 1 the insurance claim made under HCMFA's policy? Α. Yes. 3 Did HCMFA at any time prior to the 4 Ο. 5 petition date -- withdrawn. You were asked a couple of questions 6 7 where -- where you said that Mr. Dondero told you that he was ascribing zero value to the 8 notes as part of a pot plan because he believed 9 that the notes were part of executive 10 compensation. 11 Do I have that right? 12 13 MS. DEITSCH-PEREZ: Object to the form. 14 15 Α. Yes. Okay. Have you ever heard that 16 Ο. before the time that Mr. Dondero told you that 17 in the conversation about the pot plan? 18 19 Had I heard that prior to my Α. conversation with Mr. Dondero? 20 21 0. Yes. 22 No, I had not heard that prior. Α. Okay. And that was in the context 23 Ο. 24 of his formulation of the settlement proposal; is that right? 25

Page 387 WATERHOUSE - 10-19-21 1 Α. I mean, generally, yes. You know, we were asked to provide asset values, right, 3 and he was having settlement discussions. 4 Again, I don't know who those went to 5 6 ultimately. I don't recall. 7 MR. MORRIS: I have no further questions. Thank you very much for your 8 patience. I apologize for the late hour. 9 10 MS. DEITSCH-PEREZ: John, you stay on about your email when --11 MR. RUKAVINA: Hold on, I'm not 12 13 done. MS. DEITSCH-PEREZ: Oh, okay. Davor 14 15 still has questions. Sorry. I was going to say both John and Davor, could you stay 16 on afterwards just to talk about the 17 18 requests. FURTHER EXAMINATION 19 20 BY MR. RUKAVINA: Mr. Waterhouse, you were just now 21 Ο. testifying about a discussion you had with 22 Mr. Dondero where he said something like no 23 24 more payments. Do you remember that testimony? 25

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                  WATERHOUSE - 10-19-21
 1
          Α.
                Yes.
                       And was that late November or
 3
          Ο.
                Okay.
     early December of 2020?
 4
                It was, I would say, first or second
 5
          Α.
     week of November.
 6
 7
                Okay. Do you recall whether --
     whenever you had that discussion, whether
 8
 9
     Mr. Dondero had already been fired by the
10
     debtor?
                Yes, I -- I believe he was not an
11
          Α.
     employee of the debtor anymore at that time.
12
13
                And when you were discussing this
14
     with Mr. Dondero and he said no more payments,
     you were discussing the two shared services
15
     agreements and employee reimbursement
16
     agreements we testified -- you testified about
17
     before; is that correct?
18
                MR. MORRIS: Objection to the form
19
20
          of the question.
                That is correct.
21
          Α.
22
                And had your office or you -- and we
          Ο.
     will talk at a future deposition about the
23
24
     administrative claim.
25
                But had -- by that time that you
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2 talked to Mr. Dondero, had your office or you

WATERHOUSE - 10-19-21

- 3 done any estimate of what the alleged
- 4 overpayments were?

1

- 5 MR. MORRIS: Objection to the form
- of the question.
- 7 A. Yes, we had -- there was a -- there
- 8 was a detailed analysis that was put together
- 9 by David Klos at the time.
- 10 Q. And do you recall just generally
- 11 what the total amount for both advisors of the
- 12 overpayments was?
- 13 A. It was in excess of \$10 million.
- Q. Was it in excess of \$14 million?
- MR. MORRIS: Objection to the form
- of the question.
- 17 A. I -- I remember it was an
- 18 eight-figure number. I don't remember
- 19 specifically.
- 20 Q. Okay. And did you convey that
- 21 number to Mr. Dondero when you had that
- 22 conversation?
- 23 A. Yes.
- Q. What was his reaction?
- 25 A. I mean, he wasn't happy.

Page 390 WATERHOUSE - 10-19-21 1 Q. Is it fair to say he was upset? Α. Yes. 3 Did Mr. Dondero ever expressly tell 4 Ο. 5 you to not have NexPoint make the required 6 December 31, 2020, payment? 7 Yes, I recall him saying don't make the payment because it was being negotiated, as 8 I discussed with Mr. Morris, this offset 9 concept. So there were obligations due by the 10 advisors to Highland, they should be offset 11 that -- you know, those obligations should be 12 13 offset by this -- by this overpayment. And when did he tell you that? 14 Q. I would say -- I would say around --15 Α. probably December -- December-ish. 16 17 Early December, late December? Ο. I don't recall with as much 18 Α. 19 specificity as -- as -- as stopping the 20 shared services payments, because we had actually made one shared services payment in 21 22 November. So that is why I need to remember that one more clearly. I don't remember where 23 24 exactly in December that conversation occurred. 25 Q. Did Mr. Dondero expressly use the

Page 391 WATERHOUSE - 10-19-21 1 word "NexPoint" when he was saying don't make these payments? 3 MR. MORRIS: Objection to the form 4 5 of the question, asked and answered. 6 Α. Yeah, we were -- we were discussing 7 advisor obligations. So it was -- you know, it was just obligations from the advisors. 8 9 And -- and he specifically talked about the NexPoint payment as well. 10 Okay. And it is your testimony that 11 Ο. he expressly told you not to make that NexPoint 12 13 December 31 payment? MR. MORRIS: Objection, asked and 14 15 answered twice. Yes, he -- he did, during that 16 Α. conversation. 17 And did you ever follow up with him 18 Ο. after that about whether NexPoint should or 19 20 shouldn't make that payment? I did not. 21 Α. 22 Did you ever, on or about 0. December 31, 2020, remind him and say, hey, 23 24 this payment is due, what shall I -- what 25 should I do?

Page 392 WATERHOUSE - 10-19-21 1 I did not. Α. So sitting here today, you -- you 3 Ο. remember distinctly that Dondero in December of 4 2020 expressly told you not to have NexPoint 5 6 make that payment? 7 MR. MORRIS: Objection, asked and answered three times. 8 9 Α. Yes. Can you say categorically it wasn't 10 just some general discussion where he told you 11 not to make payments? 12 13 MR. MORRIS: Objection, asked and 14 answer four times. 15 MR. HORN: Four times now. Go for five. 16 17 Α. Yes. Did you tell Mr. Seery that? 18 Q. I don't believe I did. I don't 19 Α. 20 recall. And was this an in-person discussion 21 Ο. or telephone or email? Do you remember? 22 This was a phone -- a phone 23 Α. 24 conversation. Okay. Would you have a record of --25 Q.

Page 393 WATERHOUSE - 10-19-21 1 on your cell phone of when that conversation might have taken place? 3 I'm sorry, strike that. 4 Was that by cell phone? 5 6 Α. I believe -- yes, because we -- I 7 I mean, I don't have a landline. was at home. All I have is my cell phone. 8 9 Do you know whether your cell phone Q. still has records of conversations from 10 December 2020 on it? 11 My call log doesn't go back that 12 Α. 13 far. 14 Q. Okay. Thank you. 15 MR. RUKAVINA: I will pass the witness. 16 MS. DEITSCH-PEREZ: Just a couple 17 18 quick questions. 19 FURTHER EXAMINATION BY MS. DEITSCH-PEREZ: 20 With respect to HCRE and HCMS, am I 21 Ο. correct there was -- there was no direction not 22 23 to pay those loan payments? 24 MR. MORRIS: Objection to the form 25 of the question.

Page 394 WATERHOUSE - 10-19-21 1 Α. Yes, I don't recall having conversations about, you know, those -- those 3 entities. 4 5 And, in fact, what was the tone that Ο. 6 Mr. Dondero had when he talked to you about the fact that HCRE and HCMS payments hadn't been 7 made when he found out that they hadn't been 8 paid? 9 10 MS. DANDENEAU: Objection to form. MR. MORRIS: Objection to form. 11 What was the tone he took with you? 12 Q. 13 Α. Oh, it was -- it was -- it was very negative. I mean, I think he cursed 14 at me and he doesn't usually curse. 15 Okay. And in your mind, is that 16 Ο. consistent with the fact that he was surprised 17 18 that those payments hadn't been made? 19 MR. MORRIS: Objection to the form 20 of the question. 21 Α. Yes. 22 Ο. Okay. Thank you. 23 MR. MORRIS: I have nothing further. 24 Thank you so much, Mr. Waterhouse. 25 MR. HORN: I have no questions.

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1	WATERHOUSE - 10-19-21	1490 000
2	Thank you, Mr. Waterhouse. We appreciate	
3	your time. I am logging off the discussion	
4	and I will talk to y'all tomorrow.	
5	MR. MORRIS: Super.	
6	VIDEOGRAPHER: If there are no	
7	further questions, this ends the	
8	deposition excuse me. This ends the	
9	deposition, and we are going off the record	
10	at 7:30 p.m.	
11	(Deposition concluded at 7:30 p.m.)	
12		
13		
14	FRANK WATERHOUSE	
15		
16	Subscribed and sworn to before me	
17	this day of 2021.	
18		
19		
20		
21		
22		
23		
24		
25		

Page 396 WATERHOUSE - 10-19-21 1 2. CERTIFICATE 3 I, SUSAN S. KLINGER, a certified shorthand 4 5 reporter within and for the State of Texas, do 6 hereby certify: 7 That FRANK WATERHOUSE, the witness whose deposition is hereinbefore set forth, was duly 8 9 sworn by me and that such deposition is a true record of the testimony given by such witness. 10 I further certify that I am not related to 11 any of the parties to this action by blood or 12 13 marriage; and that I am in no way interested in 14 the outcome of this matter. 15 IN WITNESS WHEREOF, I have hereunto set my hand this 19th of October, 2021. 16 Jusan D Klinger 17 18 19 Susan S. Klinger, RMR-CRR, CSR 20 Texas CSR# 6531 21 22 23 24 25

1	WATERHOUSE - 10-19-21	Page 397
2	NAME OF CASE: In re: Highland Capital	
3	DATE OF DEPOSITION: October 19, 2021	
4	NAME OF WITNESS: Frank Waterhouse	
5	Reason Codes:	
6	1. To clarify the record.	
7	2. To conform to the facts.	
8	3. To correct transcription errors.	
9	PageLineReason	
10	Fromto	
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